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IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

IN RE: * BANKRUPTCY
*
SCOTIA DEVELOPMENT, LLC, * NO. 07-20027
*
DEBTOR. * CORPUS CHRISTI, TEXAS
* NOVEMBER 12, 2008
* 2:07 P.M.
* * * * *

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE RICHARD S. SCHMIDT
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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1 (The proceedings began at 2:07 p.m.)

2 (Call to Order of the Court.)

3 THE COURT: All right. So now we're on Scotia, I
4 believe. Are they on the phone also? Do we have Alexandra
5 Barrage?

6 MS. BARRAGE: Yes, Your Honor. This is Alexandra
7 Barrage --

8 THE COURT: Thank you. Larry Engel.

9 MS. BARRAGE: -- of Morrison & Foerster. My
10 colleague, Larry Engel, is also on the --

11 THE COURT: All right. Christine Rising.

12 MS. RISING: Present, Your Honor.

13 THE COURT: Ruth Van Meter. Ruth Van Meter?

14 MR. HOLZER: I don't expect her, Your Honor.

15 THE COURT: Maxim Litvak. Pachulski Stang?
16 Creditors' committee?

17 OPERATOR: Your Honor, this is the Court Call
18 operator. Maxim Litvak did not dial in.

19 THE COURT: All right. Thank you. Francine
20 Montagna?

21 OPERATOR: Your Honor, this is the Court Call
22 operator. Francine Montagna did not dial in as well.

23 THE COURT: Todd Hanson. No. All right, and then in
24 the courtroom -- anyone else on the call for -- everyone in
25 ASARCO's excused. Anyone else on the call in the ASARCO

1 matter -- I mean, in the Scotia matter? All right. Now,
2 starting over here.

3 MR. LEE: Good afternoon, Your Honor. Kyung Lee and
4 Chris Johnson with Diamond McCarthy, representing Diamond
5 McCarthy this afternoon.

6 THE COURT: All right.

7 MR. FROMME: Good afternoon, Your Honor. Eric Fromme
8 of Gibson, Dunn & Crutcher, and Ms. Coleman.

9 THE COURT: All right.

10 MR. HOLZER: Pete Holzer, Your Honor. I'm here as
11 Counsel for Humboldt Redwood on a couple of matters, and as
12 Counsel for the PLC Litigation Trust on some others.

13 THE COURT: All right.

14 MR. HAIL: Brian Hail from Goodwin Procter on behalf
15 of Humboldt Redwood Company, Your Honor.

16 THE COURT: All right.

17 MR. HOKANSON: Good afternoon. Jeff Hokanson from
18 Hostetler & Kowalik on behalf of Humboldt Redwood Company.

19 THE COURT: All right.

20 MR. HOLZER: There are a lot of matters on the
21 docket, but most of it's passes and settlements and such. So
22 let me just run down in order. Docket Number 2603 and 2605 are
23 claims objections. These are the objections involving
24 Environmental Protection Information Center, the steelworkers,
25 and there's been an agreed order submitted resetting those

1 hearings --

2 THE COURT: All right.

3 MR. HOLZER: -- by green sheet. So those two matters
4 are reset by agreement.

5 THE COURT: Okay.

6 MR. HOLZER: The next matter is Docket 3526. That's
7 the Diamond McCarthy fee application. Happy to announce that
8 that's been settled. And Mr. Lee and Mr. Hokanson are handling
9 that.

10 THE COURT: All right. Go ahead.

11 MR. LEE: Good afternoon, Your Honor. Kyung Lee for
12 Diamond McCarthy. In connection with the final fee application
13 Diamond McCarthy sought for the period August 1, '07, through
14 July 30th, 2008, a total allowance of 2,450,016.65, which is
15 comprised of two elements, fees in the amount of \$2,364,749.50,
16 and out-of-pocket expenses of \$85,267.15.

17 Of that amount, to date, Diamond McCarthy -- of the
18 total amount of 2,450,016.65, Diamond McCarthy has, to date,
19 been paid \$1,969,545.74. Diamond McCarthy has further filed,
20 about a week-and-a-half ago, a review of its fee applications
21 and agreed to voluntarily reduce its fees requested by
22 \$5,470.26, leaving a total of \$475,000.65 to be paid, if the
23 Court approves the final fee application.

24 THE COURT: Okay. And that's your agreement?

25 MR. LEE: The agreement is, Your Honor, that upon

1 filing of the objection by Humboldt Resources (sic) Company,
2 HRC, Diamond McCarthy has further agreed to reduce --

3 THE COURT: Upon withdrawing of their objection,
4 you've agreed that you'll reduce it to what?

5 MR. LEE: To \$325,000.65, which is the amount to be
6 paid. In other words, an additional \$150,000 reduction off the
7 allowed amount.

8 THE COURT: So that the amount left to be paid you,
9 and you'll be paid in full if this agreement is approved, is
10 \$325,000.65?

11 MR. LEE: Correct, Your Honor. And --

12 THE COURT: Is that your agreement?

13 MR. HOKANSON: That's right, Your Honor.

14 MR. LEE: And furthermore, that part of the agreement
15 is, unlike the plan provision which says 30 days after entry of
16 an order, it's contemplated that it will be paid on the 11th
17 day after entry of the order today. And the --

18 THE COURT: Is that your agreement also?

19 MR. HOKANSON: That is, Your Honor.

20 THE COURT: All right. Anyone on the call have
21 anything they wanted to say about this one?

22 MR. LEE: And the final point, Your Honor, which I
23 was just told about is HRC has specifically asked that it be,
24 that it reserve its rights in respect of getting this money
25 back from Diamond McCarthy in the event that the Fifth Circuit

1 overturns the confirmation order.

2 THE COURT: Okay.

3 MR. LEE: And we have so agreed.

4 THE COURT: All right.

5 MR. LEE: It's contemplated, Your Honor, that as a
6 part of this agreement, that we would in essence have --

7 THE COURT: Does Humboldt Redwood Company think that
8 if the order is overturned, the State of California will let
9 you give up the property?

10 MR. HOLZER: We don't know what will happen, Your
11 Honor, but --

12 MR. HAIL: Actually, I don't think we'll --

13 UNIDENTIFIED SPEAKER: Clearly it's going to be a
14 mess.

15 THE COURT: All right.

16 MR. LEE: And, Your Honor, a condition of this deal
17 is that there be an order entered either today or tomorrow.
18 And we have the agreement of an order --

19 THE COURT: Okay. Well, I've reviewed the fees. If
20 there's no other statement about that, I'll approve the
21 agreement.

22 MR. LEE: Thank you.

23 THE COURT: So submit the order. If you have an
24 order already --

25 MR. HOLZER: It's not ready yet.

1 THE COURT: Okay.

2 MR. HOLZER: It will be either this afternoon or in
3 the morning.

4 THE COURT: So submit it electronically on a green
5 sheet, and we'll get it entered today. All right. Next
6 matter.

7 MR. LEE: Thank you, Your Honor. Appreciate it.

8 MR. HOLZER: Next on the docket, Your Honor, was
9 3566. That's the Debtor's objection to the claim of Christine
10 Rising. And also if you drop down to the last item, 3775 was
11 the PLC Trust's motion for summary judgment on that claim.
12 Ms. Rising is on the phone. We've agreed with her to put this
13 off to a date in December. We'll get with Ms. Garza and
14 Ms. Rising and myself and select the date.

15 And in addition, Your Honor, what, instead of just
16 proceeding on the summary judgment at that time, we'd like to
17 go ahead and have that be the final trial and the summary
18 judgment at the same time.

19 THE COURT: All right. Is that your agreement,
20 Ms. Rising?

21 MS. RISING: Well, I didn't understand that it would
22 be the final judgment or agreement on trial. Does this mean if
23 we don't agree at that, on the date, it can still be arranged
24 for trial?

25 THE COURT: Well, first of all, I think the agreement

1 is -- and I don't know if it's your agreement, but what he's
2 suggesting is that rather than having a hearing on summary
3 judgment and a hearing on the trial, if they don't get the
4 summary judgment, we just have all those arguments the same
5 day. And so you put on your evidence, they make their
6 arguments, they put on their evidence, and everybody's allowed
7 to argue whatever they want to argue. And that will be the one
8 and only, the final trial on that issue, assuming it doesn't
9 get appealed.

10 MS. RISING: Oh.

11 MR. HOLZER: And, Your Honor, we'll be --

12 THE COURT: Now, the date has not been set, but I
13 would assume that you and the Debtor would agree to a date at
14 some time in December.

15 MR. HOLZER: And we're going to be flexible on that
16 and accommodate Ms. Rising's schedule to the extent we can.
17 Also just, we haven't talked about this with Ms. Rising, based
18 on the ruling you just made in the ASARCO case, when we get to
19 that point, we're happy for Ms. Rising, if she wants to appear
20 by video, I'm fairly certain there's a place in Fortuna that's
21 close to her home that that can be set up. We'd be happy to do
22 that as well so she doesn't have to come all the way to Corpus
23 Christi.

24 THE COURT: Well, you can appear by telephone or you
25 can appear, if you want, by video.

1 MS. RISING: Okay.

2 THE COURT: If we can set that up.

3 MS. RISING: Okay.

4 THE COURT: We did set up a video link, I think, at
5 one point to Scotia.

6 MR. HOLZER: That was to the headquarters of the
7 company. I'm not sure if it's still available. I just don't
8 know.

9 THE COURT: Right. So different people own it. But
10 I've got to believe that there is a video connection somewhere
11 near you that you could appear by video, Ms. Rising, if that's
12 what you'd prefer. Now, of course, if you'd like to come to
13 Corpus Christi, we'd be happy to have you here also in person.

14 MS. RISING: I would love to be able to come in
15 person, if I can find somebody to help finance the
16 arrangements, which this -- I didn't understand with Mr. Holzer
17 this morning that this would be like the one and final time. I
18 only understood that the motion for summary judgment would be
19 postponed until a time that would better convenience, you know,
20 his firm as well, which that's what I agreed to, but I don't
21 know if I'd be able to be ready to do the whole thing.

22 I would also like to point out that my summer bridge
23 is indeed out, so it's 45 minutes from my house over a mountain
24 road just to the highway. And with the different disabilities
25 I have beyond the scope of my ear, it's very difficult, and

1 it's also been quite costly to travel, because generally I have
2 to have someone drive me. However, I want to do whatever I can
3 to make things right with everyone.

4 But in lieu of the fact that there were 1,002 pages
5 that have been sent to me since we all last spoke, and none of
6 which is in any kind of order at all, I have quite a bit here
7 to try to digest. And this was one of the reasons why I had
8 asked Mr. Holzer and had put into my response to the summary
9 judgment if it could be continued on at a little later date
10 when I could --

11 THE COURT: Well, so you want to hear the summary
12 judgment motion first, and then if you survive the motion for
13 summary judgment, at that point you want to have your claims
14 objection hearing?

15 MS. RISING: Yes, if that could be possible, Your
16 Honor. Thank you. That's pretty --

17 THE COURT: It wouldn't, I mean, if I were advising
18 you as a lawyer, which I'm not, I would tell you that would
19 probably be a mistake to do, because -- but, I mean, you see,
20 because I think at some point -- I don't know what their motion
21 for summary judgment is, but if they win that, you'll never
22 have a chance to address the Court factually about your claim,
23 because they're apparently alleging that they have some sort of
24 legal position why it is that you should not have a claim. And
25 we'd just be arguing the legal position of whether or not you

1 are entitled to have a claim in the motion for summary
2 judgment. If they were to win that, then it would be over.

3 MS. RISING: I understand.

4 THE COURT: If they were to lose, then we'd go on to
5 the claim, and at that point you'd put on all your evidence of
6 your claim and why you're entitled to whatever you're entitled
7 to.

8 Now, I mean, if you're not ready to go in December, I
9 mean, we could probably make it later in December, or perhaps
10 even early in January. But we need to move on. I mean, the
11 Bankruptcy Code envisions that claims objection procedure is
12 done in a, somewhat of a summary fashion. In other words, it's
13 not, not like a trial. It's not supposed to take, you know, a
14 year or six years, like some trials take. It's just supposed
15 to be in a reasonable period of time.

16 So we usually get, the standard claims objection
17 procedure sets up the trial on a claims objection within about
18 three months of the objection. But I understand that you're
19 out there, and it's difficult for you to get places. So we're
20 trying to accommodate your schedule. When would you be ready
21 to try all of it?

22 MS. RISING: Well, I --

23 THE COURT: I mean, we don't even normally have
24 motions for summary judgment in claims objections. But when
25 would you be ready to try all of it?

1 MS. RISING: Gosh, I hate to sound flaky, but I'm at
2 the mercy of my own body. And I've been feeling, I've been
3 getting lower lately, and I was kind of hoping that I'm going
4 to come back up again. But that's my biggest concern is where
5 I'm going to be on the line. And unfortunately, my body never
6 gives me a warning of, you know, what's going to happen next.

7 I would hope that I would be ready, you know, with
8 the, you know, with the next time that we all meet, to be ready
9 to go. I'm just concerned that if for some reason that I'm
10 down, and you know, unable to walk and talk and chew gum at the
11 same time, that that might be the --

12 THE COURT: Okay. Well --

13 MS. RISING: -- the last nail for me, so to speak.

14 THE COURT: In the event that you have a medical
15 problem, do you seek the care of a physician?

16 MS. RISING: I do.

17 THE COURT: So would you have a physician that would
18 be able to say, "She's not capable of going forward with this
19 at this time"?

20 MS. RISING: Yes.

21 THE COURT: Well, so we can schedule it in December.
22 And if you have a problem, then we'll just continue it. If
23 you're medically unfit to go forward, I mean, we won't force
24 you to trial.

25 MS. RISING: Okay. That's fine. Thank you, Your

1 Honor.

2 THE COURT: So if you do have a problem, make certain
3 that you get the medical information to the other side, and I
4 suspect that they'll agree to a continuance. So, and if they
5 won't, I'll make them. So, I mean, they know that they're not
6 going to force you to trial if you're in bad physical
7 condition. Ultimately, we've got to go to trial on this at
8 some point, but --

9 MR. HOLZER: But our concern, Your Honor, is that
10 Ms. Rising constantly complains of her bad physical condition.

11 THE COURT: Well, she's in, you know, that --

12 MR. HOLZER: And conceivably could run this out for
13 years.

14 THE COURT: Well, it isn't going to get run out for
15 years.

16 MR. HOLZER: It needs to be over.

17 THE COURT: But if we set it for trial and one time
18 there's a problem, we'll continue it. So see if you can agree
19 on a date. And Mr. Holzer can get with you and my staff about
20 a date in December.

21 MR. HOLZER: I'll work --

22 THE COURT: All right. Thank you.

23 MR. HOLZER: I'll do that in good faith, Your Honor.

24 THE COURT: Okay. Moving on.

25 MR. HOLZER: The next matter on was the, actually

1 what --

2 THE COURT: And Ms. Rising, you're free to go, if
3 you'd like. You can hang up if you want to, or you can
4 continue to listen. All right. Go ahead.

5 MR. HOLZER: Next matter on the docket was Docket
6 3599. That's the Gibson Dunn fee application. There's also an
7 objection to that by Humboldt Redwood Company, and that's a
8 contested matter. There will be witnesses and evidence today
9 on that matter.

10 THE COURT: Okay.

11 MR. HOLZER: Next matter on the docket is --

12 THE COURT: Okay. So you were able to settle
13 Diamond, but not Gibson & Dunn.

14 MR. HOLZER: That's correct, Your Honor.

15 THE COURT: Okay.

16 MR. HOLZER: Docket 3664 and 3699 are claims
17 objections with CNA. Those are also agreed resets, and I don't
18 remember if I've submitted the order or if I will submit an
19 order. In any event, those are reset by agreement.

20 THE COURT: All right.

21 MR. HOLZER: 3724 is the supplemental Gibson Dunn fee
22 application.

23 THE COURT: Okay.

24 MR. HOLZER: 3732 and 3734 are orders setting the
25 hearings.

1 THE COURT: Okay.

2 MR. HOLZER: 3751 is the PLC Litigation Trust's
3 Fourth Omnibus Objection to Claims. Your Honor, there are some
4 settled, some passes and some defaults, so I'd like to run
5 through those.

6 THE COURT: All right. Go ahead.

7 MR. HOLZER: All the parties being defaulted were
8 served with notice of the hearing and a copy of the objection.
9 And none of the defaulting parties responded. Their names are
10 Pierce Baymiller, D2 Trucking Inc., FleetPride, Key Equipment
11 Finance, Rex Perkes, P-E-R-K-E-S, Regents, the Regents of the
12 University of California, Rounds Logging, Inc., and United
13 Airlines Air Travel Plan.

14 Your Honor, the Debtor's evidence would show that,
15 with respect to Pierce Baymiller, that he has no cognizable
16 damages arising from rejection of his contract.

17 With respect to D2 Trucking, FleetPride, Rex Perkes,
18 Regents of the University of California, Rounds Logging and
19 United Air Travel Plans, there is no evidence in the Debtor's
20 books and records that there's any debts or obligations owed to
21 those parties.

22 With respect to Key Equipment Finance, those claims
23 were addressed and settled under the plan, and they are not
24 unsecured claims. They were actually contract assumption
25 administrative claims pursuant to a settlement.

1 And additionally, the objections to FHK Companies and
2 Johnson Brothers, by agreement, will be reset for pretrial
3 conference on December 5 at 9:00 a.m.

4 And the objection to the California Franchise Tax
5 Board are reset for initial pretrial conference on December 16
6 at 9:00 a.m.

7 And I have, let's see, settlements include Robert
8 Manny, the objection was withdrawn, George A. O'Brien and John
9 D. Roach, those have all been settled and addressed separately
10 by stipulations. And I have an order that recites everything I
11 just told you.

12 THE COURT: All right.

13 MR. HOLZER: And that's all the matters, Judge.
14 We're on the Gibson Dunn fee application.

15 THE COURT: All right. I'm ready to proceed. Go
16 ahead.

17 MR. FROMME: Your Honor, Eric Fromme, Gibson, Dunn &
18 Crutcher -- on behalf of Gibson, Dunn & Crutcher, and of Gibson
19 Dunn & Crutcher. We're here on HRC's objection to Gibson's fee
20 application. Unfortunately, we were not able to reach a
21 settlement, though we tried. The parties were not --

22 THE COURT: Okay. What's the total amount of the fee
23 application?

24 MR. FROMME: The total amount of the fee application
25 is over \$13 million, Your Honor. And Gibson --

1 THE COURT: Okay. Go ahead and give me the exact
2 number.

3 MR. FROMME: The exact number, I'll have to take a
4 look at the application to give that to you.

5 THE COURT: Okay.

6 MR. FROMME: The exact, the exact amount, Your Honor,
7 is on Docket Number 3599, and the exact amount requested for
8 fees are \$13,768,598.28.

9 THE COURT: 598.28? Okay.

10 MR. FROMME: Correct.

11 THE COURT: And how much for expenses?

12 MR. FROMME: \$931,060.26.

13 THE COURT: Okay. And how much have you been paid to
14 date?

15 MR. FROMME: I'm sorry, Your Honor. That does not
16 include a supplemental fee application that we filed --

17 THE COURT: Okay.

18 MR. FROMME: -- afterwards.

19 THE COURT: And so that supplement is how much?

20 MR. FROMME: The supplement is -- I'm sorry I didn't
21 have this handy for you, Your Honor. I apologize. Let me just
22 skip to the -- that is on Docket Number 3724, Number 21 in our
23 binder, Exhibit Number 21.

24 THE COURT: You probably -- I'm going to get a
25 binder, I'm guessing?

1 MR. FROMME: I'll hand it up to you, Your Honor --

2 THE COURT: Okay.

3 MR. FROMME: -- in just a second. The fees for that
4 are \$105,997.

5 THE COURT: Okay. Any expenses?

6 MR. FROMME: I'm sorry. That's the total, the total
7 fees is \$105,997, and the expenses are \$5,740.

8 THE COURT: All right. So the total that you have
9 applied for in your final application is a sum of 13,700,000,
10 931, 105 and 5.7.

11 MR. FROMME: Yes, Your Honor.

12 THE COURT: Okay. And how much have you been paid to
13 date?

14 MR. FROMME: We've been paid to date, which is again
15 on Tab 2 in our binder on our fee application, and the amounts
16 that we've been paid to date are approximately \$6 million. Let
17 me get you that exact -- I'm sorry -- \$7,415,431.51.

18 THE COURT: And so the total amount that you want to
19 get paid is how much, in actual money left to be paid?

20 MR. FROMME: Yeah, the rest of that would be the six,
21 which would be six --

22 THE COURT: Which would be about --

23 MR. FROMME: Which would be about \$6.9 million.

24 THE COURT: 15, about 15 million, less 7.4. So about
25 7.6 million.

1 MR. FROMME: I think it's about 6.9 -- or 7.6.

2 THE COURT: I don't know. I mean --

3 MR. FROMME: I'll add up the numbers for you, Your
4 Honor. And I'm sorry I didn't do that --

5 THE COURT: Okay. You don't know how much you want.

6 MR. FROMME: I do have it down, and I --

7 THE COURT: Yeah, I would have added that up first.
8 That's the first thing I would have done, but hey --

9 MR. FROMME: And I apologize for that, Your Honor.

10 THE COURT: All right. Go ahead.

11 MR. FROMME: And I'll go ahead and add that up.

12 THE COURT: It's not -- I mean, I'm just, it's just
13 interesting that you don't really --

14 MR. FROMME: I have it set out in a proposed order,
15 and I'll dig that up for you, Your Honor.

16 THE COURT: Okay.

17 MR. FROMME: And I'll hand it, we'll hand it to you
18 in the binder.

19 THE COURT: All right. So now do I have a folder or
20 a binder that's full of your exhibits?

21 MR. FROMME: Full of our exhibits, Your Honor. Yeah,
22 we do. And do you want me to hand that up to you now?

23 THE COURT: Yes.

24 MR. FROMME: Yes.

25 THE COURT: Have you seen it, Mr. Holzer? Are you --

1 MR. HOLZER: Mr. Hokanson is --

2 MR. HOKANSON: Yes, we have.

3 THE COURT: Okay. Are you objecting to anything in
4 that?

5 MR. HOKANSON: No.

6 THE COURT: The admissibility of anything in that
7 binder?

8 MR. HOKANSON: We are not.

9 THE COURT: All right. So it's admitted. Now, do
10 you have a binder?

11 MR. HOLZER: We do, Your Honor, Exhibits 1 through
12 17.

13 THE COURT: And have you seen those?

14 MR. FROMME: Yes, I have, Your Honor.

15 THE COURT: And do you object to any of those?

16 MR. HAIL: I think we withdraw for right now the
17 Exhibit 14, which --

18 MR. HOLZER: We're not offering Exhibit 14 at this
19 time, Your Honor.

20 MR. FROMME: Which is Exhibit 14?

21 THE COURT: All right. So --

22 MR. HOLZER: That's the deposition.

23 MR. HAIL: That's the deposition.

24 THE COURT: So do you have any objection to the
25 others?

1 MR. FROMME: Yeah, Your Honor. Exhibit 17, we agree
2 it should be admitted for demonstrative purposes, but it's not
3 evidence of anything. But we agree it should be admitted for
4 demonstrative purposes.

5 THE COURT: Okay. 17, both sides agree that it's a
6 demonstrative exhibit. It's just a summary. Is that right?

7 MR. HOKANSON: Yes, Your Honor.

8 THE COURT: Okay. So 1 through 17, although 14's in
9 here, it's not being offered yet at this time. So other than
10 14, they're admitted. But 17 is only admitted as a
11 demonstrative exhibit, not for the truth of the matters stated
12 therein.

13 MR. HOKANSON: That's right, Your Honor.

14 THE COURT: Not that you're saying it's not true,
15 it's just that other evidence will be dispositive of whether
16 it's true. All right. And your Exhibits 1 through 44 are
17 admitted. All right.

18 MR. FROMME: Thank you, Your Honor. A couple of
19 points I'd like to point out to you how I would like to
20 proceed. First of all, Gibson Dunn has already voluntarily
21 written down \$1.2 million from its fee application and its
22 request.

23 THE COURT: So it originally was, instead of 15, it
24 was 16.2.

25 MR. FROMME: Correct, Your Honor.

1 THE COURT: And so now you're down to whatever it is,
2 15 --

3 MR. FROMME: Yeah.

4 THE COURT: -- or somewhere in there.

5 MR. FROMME: We'll walk you through those numbers.
6 That's -- I'll get the order out for you.

7 MR. HAIL: Your Honor, I don't believe there was ever
8 a fee application filed for the amount they claim was written
9 down. I think they never sought any compensation for that. So
10 there's never been an application filed.

11 THE COURT: Okay.

12 MR. HAIL: So there isn't a --

13 THE COURT: All right. So there was a review
14 internally before you filed the application in which you
15 decided to only file for this amount that you're suggesting
16 today.

17 MR. FROMME: Correct, Your Honor. The U.S. Trustee
18 asked us for a few thousand dollar reductions, and we agreed to
19 those as well.

20 THE COURT: Okay. So you met with the U.S. Trustee
21 and they reviewed your fees, and they asked for a reduction of
22 that 1.2 million.

23 MR. FROMME: Correct, Your Honor.

24 MS. COLEMAN: No.

25 MR. FROMME: I'm sorry, not the 1.2 million, just

1 about \$7,000.

2 THE COURT: 7,000?

3 MR. FROMME: Yeah. The U.S. Trustee saw our fee
4 application, saw --

5 THE COURT: The fee application where you had already
6 written off the 1.2.

7 MR. FROMME: Correct, Your Honor.

8 THE COURT: And had a \$7,000 problem with it, which
9 you've agreed to.

10 MR. FROMME: Yes, Your Honor.

11 THE COURT: Okay. Now we get all of the nomenclature
12 right.

13 MR. FROMME: Okay. Now, HRC's objection really
14 centers on two things: One, whether the Fifth Circuit case of
15 ProSnack means that Gibson should not be compensated for a
16 large portion of its fees, and we'll address that in closing
17 argument. The second part is the objection based on a fee
18 auditor that HRC hired called Legal Cost Controller, LCC, and
19 they produced a report, and we will address that with
20 Ms. Coleman's declaration that we've submitted and her
21 testimony today, and we'll offer her for testimony.

22 It's important that that report is an exhibit, but no
23 party, the parties have not agreed that that is an expert
24 report. It's not an expert report. And it's provided for you,
25 Your Honor. You can give it the weight that you see fit.

1 THE COURT: Okay.

2 MR. FROMME: We think you should give it little to no
3 weight.

4 THE COURT: So it's in here as one of your exhibits.

5 MR. HOKANSON: It is, Your Honor.

6 THE COURT: And which exhibit is it?

7 MR. HOKANSON: I believe it's 1 through 6.

8 THE COURT: Okay. It's -- okay.

9 MR. HOKANSON: 1 through 7, if you include the
10 executive summary, which is Number 7, Judge.

11 THE COURT: Okay.

12 MR. HOKANSON: And then Exhibit Number 8 is a
13 declaration of an officer of LCC.

14 THE COURT: And you've agreed to the admission of
15 this declaration?

16 MR. FROMME: Yes, Your Honor, I do.

17 THE COURT: They're not here to testify, but you're
18 not, you're just allowing the direct testimony in.

19 MR. FROMME: Yes. Yes, Your Honor.

20 THE COURT: Okay.

21 MR. FROMME: We have no objection to the declaration
22 nor the report --

23 THE COURT: Okay.

24 MR. FROMME: -- as offered. And with that, Your
25 Honor, we're ready to proceed and have Ms. Coleman take the

1 stand.

2 THE COURT: Okay. Did you want to make a statement
3 before we started the evidence?

4 MR. HOKANSON: I don't think so, no.

5 MR. HAIL: Your Honor, we'll save it for closing
6 argument after the witness is presented.

7 THE COURT: Okay. That's fine.

8 MR. HAIL: And talk about the law then.

9 THE COURT: All right. Ms. Coleman, come forward and
10 be sworn in, please.

11 (Witness sworn.)

12 MR. FROMME: Your Honor, Eric Fromme. May I approach
13 the witness and hand her the witness binder?

14 THE COURT: You may. Which -- her proffer is
15 number --

16 MR. FROMME: It should be Exhibit 38, Your Honor.

17 THE COURT: All right. Thank you.

18 MR. FROMME: At the end. It's the last item in the
19 last binder, I mean, the first binder.

20 THE COURT: Okay.

21 MR. FROMME: Entitled Corrected Declaration.

22 THE COURT: Okay. And you are the same Kathryn
23 Coleman that's been here for the last year?

24 THE WITNESS: Yes, sir.

25 THE COURT: Okay. Let me just read your proffer.

1 (Court reads witness's proffer.)

2 THE COURT: Okay. Let me just ask, since I guess
3 it's an obvious question. Paragraph 170, you say Milback
4 (phonetic) Benson firm did not charge ScoPac for its services,
5 as described in Paragraph 172 above. And the last paragraph is
6 Paragraph 170. So what paragraph did you really mean?

7 THE WITNESS: I'm sorry, Your Honor. It's, I believe
8 it is 168.

9 THE COURT: Okay.

10 THE WITNESS: But Page 32 is missing from at least my
11 copy of this.

12 THE COURT: Okay. I go from 164 -- I guess I'm
13 missing Page 32 then.

14 THE WITNESS: Yeah. We need to get a copy of
15 Page 32. I'm sure it is a copying error.

16 THE COURT: So I need Page 32 of her proffer. Okay.

17 THE WITNESS: You'd think when I corrected it I would
18 have corrected that one, too, but I forgot. I apologize.

19 (PAUSE.)

20 THE COURT: Okay. So we need to get a copy of this
21 for the official version. All right. Everything correct in
22 your proffer?

23 THE WITNESS: Yes, it is, sir.

24 THE COURT: Any other questions?

25 KATHRYN COLEMAN, WITNESS NO. 1, SWORN

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DIRECT EXAMINATION

BY MR. FROMME:

Q. Do you have anything to add to your declaration, Ms. Coleman?

A. Yes, I do. I don't recall the paragraph number, but there is something in here about Westlaw computerized research that I wanted to add to.

Q. That would be on Paragraph 161, Page 31 of your declaration.

A. Yes. And what I say here is that we only charge it for the actual cost of computer assisted research. And I wanted to make it clear that this is consistent with our retention application. Our practice is we have a flat fee for the entire firm. We get a substantial discount, and we pass the discount to the clients. But the flat fee is allocated, is allocated according to, allocated to different matters on the formula basis. It's not actually billed per matter, as I understand it from management, so I wanted to clarify that.

THE COURT: Okay.

MR. FROMME: Your Honor, no further questions.

THE COURT: All right. Your witness.

MR. HAIL: Good afternoon, Your Honor. This is Brian Hail from Goodwin Procter on behalf of Humboldt Redwood Company.

CROSS-EXAMINATION

1 BY MR. HAIL:

2 Q. Ms. Coleman, you are a partner at the firm of Gibson,
3 Dunn & Crutcher. Correct?

4 A. Yes.

5 Q. And Gibson, Dunn & Crutcher is seeking fees in this case
6 that are approximately \$13.9 million. Correct?

7 A. Yes, that's correct.

8 Q. Is that the highest fee application filed by any
9 professional in this court in connection with this case?

10 A. I believe that it is, yes.

11 Q. Is it higher than any fee application by any professional
12 in this case by several million dollars?

13 A. Yes, I believe it is.

14 Q. Who is your understanding who would ultimately pay that
15 fee application, Humboldt Redwood Company?

16 A. My understanding is that pursuant to the plan, yes,
17 Humboldt Redwood would pay it.

18 Q. How many timekeepers from Gibson, Dunn & Crutcher that are
19 professionals billed time to this matter?

20 A. I believe the answer is, over the three years, something
21 like a hundred, something like that.

22 Q. How about 111 different lawyers. Is that right?

23 A. I'm sorry, it's not lawyers. That includes a very large
24 number of paralegals, research librarians, other people for
25 whose time we account, but they're not lawyers.

1 Q. 111 timekeepers. Correct? Do you know how many lawyers
2 billed time?

3 A. I don't.

4 Q. Have you ever looked?

5 A. I've looked at a long list, but I didn't count it up.

6 Q. Okay. Now, for the fourth interim time period, what time
7 period are we talking about for that application?

8 A. I believe that is February 1st of 2008 through July 30th
9 of 2008.

10 Q. And for that time period, the amount of the fee
11 application is approximately \$6.8 million. Is that right?

12 A. I think that's correct, but we can look. There's a way to
13 be sure, but I think that's correct.

14 Q. I think we just ran through the number with Mr. Fromme.

15 MR. HAIL: What's the exhibit number of the fee app.?

16 MR. FROMME: Number 2.

17 BY MR. HAIL:

18 Q. Oh, Exhibit 2. And on the first page of the actual fee
19 app., there's a list of fees sought in connection with the
20 case. Do you see that? It's Gibson Dunn Exhibit 2.

21 A. Yes.

22 Q. And that number that, for the fourth period, which is the
23 six-month period between February and July, is \$6.8 million of
24 Gibson Dunn's fees. Correct?

25 A. Yes. That's correct.

1 Q. Okay. And if we take a look at the fourth page of that --
2 well, I guess it's Page 5 of 37, in the upper right-hand
3 corner.

4 A. Okay.

5 Q. There's a line item for contract attorneys. Do you see
6 that line?

7 A. Hold on. Are you talking about total contract attorney
8 fees?

9 Q. Yes, I am.

10 A. Yes, I see that.

11 Q. And that number that you're seeking as a contract attorney
12 fee is \$554,140.50. Correct?

13 A. Yes. That's what it says.

14 Q. And that is for this six-month time period. Correct?

15 A. Yes.

16 Q. Do you know the total amount sought by Gibson Dunn for
17 contract attorneys over the entire lifetime of this engagement?

18 A. I believe that the only time we used contract attorneys
19 was in connection with document review for the confirmation
20 hearing, which happened during this time period. So I think
21 that this is the only contract lawyer amount for all four fee
22 applications.

23 Q. Okay. And if you take a look back on the preceding pages,
24 for this six-month time period, and I'm turning now to Page 3
25 of 37, do you see that in the upper right-hand corner? I'm

1 just showing you how I'm going back and forth on the pages.

2 A. Yes. I see it.

3 Q. It lists the person's title and the number of hours
4 billed. Correct?

5 A. Yes.

6 Q. And this is only for the six months. Right?

7 A. Yes.

8 Q. Okay. And for that six-month period, the records
9 indicate, your fee application indicates you personally billed
10 1,730 hours. Correct?

11 A. Point five. That's right.

12 Q. Okay. And would that put you among the highest billers in
13 the entire Gibson Dunn firm?

14 A. I don't know, but I sure hope so.

15 Q. Okay. And in connection with that, you also, this doesn't
16 include hours billed in January. Correct?

17 A. It does not include hours billed in January. That's
18 correct.

19 Q. And in January you billed, do you remember how many hours
20 you billed to this matter in January?

21 A. I think you told me yesterday it was 146.

22 Q. Well, you don't have to believe me. It's in your fee
23 applications. Right?

24 A. It is somewhere in our fee applications, but my most
25 recent recollection is our discussion about it yesterday, you

1 told me it was 146.

2 Q. And do you have any reason to disagree with that? Does it
3 sound not right to you?

4 A. Sounds about right.

5 Q. Okay. So roughly from the beginning of the year through
6 the end of the case on July 30th, you personally have billed
7 1,880 hours to this matter. Is that right?

8 A. Yes, that's --

9 Q. Do you know how many different lawyers billed time,
10 including contract lawyers, to this matter from January 1,
11 2008, through the confirmation, the effective date of July 30,
12 2008?

13 A. How many Gibson Dunn lawyers? Or how many lawyers
14 overall?

15 Q. How many Gibson Dunn lawyers.

16 A. Billed to this matter from January 1st of 2008 through
17 July 30th, 2008?

18 Q. Right.

19 A. I do not know that answer off the top of my head, no.

20 Q. Okay.

21 A. I would assume that it is probably 40 or 50, if you count
22 contract attorneys, who are our document review specialists,
23 and if you count associates who billed a small amount of time.
24 For example, we've got somebody on here who billed .5 hours,
25 and you're including that person in the same breath as somebody

1 who billed a thousand hours. You've got somebody on here who
2 billed, two people who billed .5 hours. We've got somebody
3 billing eleven hours. So if you count everybody, even if they
4 just answered a question and billed a quarter of an hour, or
5 six minutes, yeah, you'd probably have a list of maybe -- I
6 don't know. Eyeballing it, looks like 35, 40, something like
7 that.

8 Q. Now, I know we were all in the courtroom many times, and
9 the Court said the dialog would go a lot faster if you answer
10 the questions that I ask. And honestly, I was just looking for
11 the number in that case. If you look specifically at
12 Mr. Maloney, for example, he billed half an hour to the case?

13 A. He did.

14 Q. And you're seeking compensation for that half hour.
15 Correct?

16 A. We are not. We have a policy of writing off the time of
17 anybody who billed less than five hours --

18 Q. Where do I --

19 A. -- to any matter in a month.

20 Q. Okay. Where do I see that? Oh, okay. So the deduction
21 for de minimis time then is on the last page. Is that right?

22 A. I believe there's an aggregate number, yes, on the last
23 page.

24 Q. So the --

25 A. Hold on, which is page --

1 Q. Sure.

2 A. -- 5.

3 THE COURT: We're on Exhibit Number 2?

4 MR. HAIL: Yes, Your Honor. And I'm specifically now
5 on Page 5 of 37.

6 THE COURT: 5 of 37.

7 MR. HAIL: And the --

8 THE COURT: Okay. My Exhibit 2 has 30 pages, but --

9 MR. HAIL: In the upper right-hand corner, does it
10 say "5 of 37"?

11 THE COURT: It says 12 of 37. Okay. I'm sorry. I
12 looked at Page 5 at the bottom. So at the top, 5 of 37.

13 MR. HAIL: That's right, Your Honor.

14 THE COURT: Deduction for de minimis time of 72
15 hours. That's \$36,000.

16 MR. HAIL: That's right.

17 BY MR. HAIL:

18 Q. So the amount of time that Gibson Dunn wrote off in
19 connection with de minimis time of less than five hours per
20 month for this \$6.8 million fee application was 36,000, roughly
21 \$36,000. Correct?

22 A. Yes. That's correct.

23 Q. Okay. Now, the month of April was a busy month for you,
24 wasn't it?

25 A. Yes, it was.

1 Q. And in fact, you billed over 400 hours to this matter,
2 didn't you?

3 A. I believe technically I billed exactly 400 hours to this
4 matter.

5 Q. And Mr. Doran also billed over 400 hours to this matter.
6 Correct?

7 A. I believe he billed something like 398 hours to this
8 matter. We can look.

9 Q. We can look. And Mr. Fromme billed almost 400 hours in
10 this matter, too. Correct?

11 A. Yes, he did.

12 Q. All right. I know Mr. Doran billed over 400, but we can
13 come back to that. If you turn to Tab 10, Tab 10, please, of
14 the Gibson Dunn Exhibit Notebook --

15 THE COURT: 10, okay.

16 MR. HAIL: And I have it at the bottom, Page 1 of
17 Exhibit 2, Your Honor. I can't, it's kind of towards the back.
18 If you work backwards, might be the easiest way.

19 THE COURT: I've got Page 1 of Exhibit 2.

20 BY MR. HAIL:

21 Q. And Page 1 of Exhibit 2 is the Summary of Time Expended by
22 Attorneys and Support Staff. Do you see that, Ms. Coleman?

23 A. Yes, I do.

24 Q. And in fact, I'll go back and read the name of the
25 pleading. The pleading is Fee Statement of Gibson, Dunn &

1 Crutcher for the Period April 1, 2008, through April 30, 2008.
2 Do you see that?
3 A. Yes, I do.
4 Q. Okay. So this is the fee application for that one month.
5 Right?
6 A. Correct.
7 Q. And if I wanted to know how many hours you were seeking
8 for in a fee application for the month of April, this is the
9 document I would look at. Right?
10 A. That's correct.
11 Q. Okay. So if we look at Mr. Doran, he has 400.1 hours.
12 Correct?
13 A. You're right. That is over 400 hours.
14 Q. And you, Ms. Coleman, are at 400.2 hours.
15 A. Six minutes more, correct.
16 Q. Okay. And Mr. Fromme is 395 hours.
17 A. Yes.
18 Q. Correct?
19 A. That's correct.
20 Q. All right.
21 A. So he got a break.
22 Q. Have you ever billed 400 hours in a month before?
23 A. I sure have not.
24 Q. Do you know if Mr. Doran's ever billed 400 hours in a
25 month before?

1 A. He probably has actually.

2 Q. Do you know that?

3 A. I don't.

4 Q. Okay. Did you ever talk to him about it?

5 A. Sure.

6 Q. Okay. That he billed 400 hours in a month?

7 A. In this month? Of course I talked to him about it.

8 Q. Okay. And in other matters, did you ever ask him whether
9 or not he had billed 400 hours?

10 A. I asked him if this was the hardest he had ever worked in
11 any month. And he said, "If not, it's very close to it."

12 Q. And in fact, you also agreed this is the hardest you've
13 ever worked on a case in your entire career. Right?

14 A. That's absolutely right, and I hope to never have to do it
15 again.

16 Q. Now, you indicated in -- well, I'll come back to that
17 point. Gibson Dunn initially filed a fee application for
18 retention in this case. Correct?

19 A. An application, yes.

20 Q. And if you turn to the white notebook --

21 MR. HAIL: Do we have -- did we give him the white
22 notebook?

23 THE COURT: Yes. You didn't give her one, but you
24 gave me one.

25 MR. HAIL: Okay. How about if I give you one. May I

1 approach the witness, Your Honor?

2 THE COURT: You may.

3 MR. HAIL: Okay.

4 THE WITNESS: Thanks.

5 BY MR. HAIL:

6 Q. And specifically look at Exhibit Number 9, please, which
7 is Docket Number 154.

8 A. Yes.

9 Q. And that is the application --

10 A. Yes.

11 Q. -- for an order approving the employment of Gibson, Dunn &
12 Crutcher. Do you see that?

13 A. I do.

14 Q. And in this application, it is represented that, if you
15 turn to Page 28 -- I'm sorry -- Paragraph 28, which is on
16 Page 12, at the bottom of Page 12, beginning of Page 13.

17 A. Yes.

18 Q. "As set forth in the Coleman affidavit, Gibson Dunn
19 intends to apply to the Court for payment of compensation and
20 reimbursement of expenses in accord with procedures set forth
21 in the applicable provisions of the Bankruptcy Code, the
22 Bankruptcy Rules, and the Local Bankruptcy Rules of the United
23 States Bankruptcy Court for the Southern District of Texas, as
24 those procedures may be modified or supplemented by order of
25 this Court." Do you see that?

1 A. I do.

2 Q. Are you familiar with the local rules for complex cases in
3 this matter, in this district?

4 A. I have read them, yes.

5 Q. Okay. Did you read them before you filed this
6 application?

7 A. Yes.

8 Q. Okay. And in fact, if you turn to Exhibit 10 of your, in
9 the Defendant's notebook tab, it is the affidavit of
10 Ms. Coleman that was attached to the application. And for the
11 record, that is document number, Docket Number 154-2. And it
12 should be --

13 MR. HAIL: Is it behind Tab 10?

14 UNIDENTIFIED SPEAKER: Yes, it is.

15 BY MR. HAIL:

16 Q. Okay. And specifically, if you take a look at Paragraph 9
17 of that affidavit, you -- is this your declaration, by the way?
18 Well, I guess, is it your affidavit?

19 A. Yes, it is.

20 Q. Do you recall reading this affidavit before you signed it?

21 A. Yes.

22 Q. Okay. And Paragraph 9 says that, "Gibson Dunn intends to
23 apply to the Court for payment of compensation and
24 reimbursement of expenses in accord with the procedures set
25 forth" -- well, I won't read the whole thing. It's the same

1 language from the other, from the application. Correct?

2 A. It appears to be, yes.

3 Q. Okay. And had you read the general rules before you
4 signed the affidavit?

5 A. Yeah. I believe I said that before, but yes.

6 Q. Okay. And in fact, the order of the Court specifically
7 required that as well, didn't it? And --

8 A. I'm not sure to which order you're referring.

9 Q. Okay.

10 A. But I'm going to assume that there's an order approving
11 the application on this basis.

12 Q. Okay. If you turn to Exhibit 12 in your book, Paragraph 3
13 of the order, "Gibson Dunn shall be compensated in accordance
14 with the terms of the agreement, in accordance with applicable
15 provisions of the Bankruptcy Code, the Bankruptcy Rules, and
16 the local rules and orders of the Court." Do you see that?

17 A. Yes, I do.

18 Q. Okay. Now, when was the last time you read the local
19 rules in connection with, it is titled General Order in the
20 Matter of Procedures for Complex Commercial -- I'm sorry -- for
21 Complex Chapter 11 Cases.

22 A. Is that the, is that the complex guidelines on the
23 website?

24 Q. No. Well, I don't know if they're on -- I mean, why don't
25 you turn to Exhibit 16 in our book. I mean, I don't know if

1 they're on the Southern District of Texas bankruptcy website or
2 what you're referring to.

3 THE COURT: They are. Go ahead.

4 THE WITNESS: I reviewed these rules on the Court's
5 website over the weekend.

6 BY MR. HAIL:

7 Q. Over the weekend.

8 A. In preparation for this hearing.

9 Q. Did you read them before you executed your declaration,
10 which I believe we concluded was -- well, I guess we'll have to
11 go backwards a little bit. You signed two declarations in this
12 case. Right?

13 A. In this case, or in this hearing, for this hearing?

14 Q. I'm sorry. In connection with this hearing.

15 A. Yes.

16 Q. Okay. And you signed one, or one was filed yesterday --
17 I'm beginning to get my days a little bit messed up. I guess
18 it was Monday. Correct?

19 A. One was filed Monday. Correct.

20 Q. And what time was it filed on Monday?

21 A. I believe late afternoon central time.

22 Q. Okay. And then there's the corrected one filed again.
23 Right?

24 A. Yes, the corrected one to take out the --

25 Q. And that was filed either this morning or late last night.

1 Right?

2 A. That's correct.

3 Q. Okay. And when I say "before you executed your
4 declaration," I really mean the first one, because there's no
5 substantive change between the two. Do you understand that?

6 A. I do understand that, yes.

7 Q. Okay. Before you executed the declaration, did you read
8 the General Order that applies in this district?

9 A. I did.

10 Q. Did you agree that the fees sought by Gibson Dunn would
11 comport with the terms of this General Order?

12 A. Generally, yes.

13 Q. In what ways do you think that the fees sought by Gibson
14 Dunn did not need to comport with this General Order?

15 A. I don't think that -- oh, do they need to? Was that your
16 question? I'm sorry.

17 Q. Correct.

18 A. Maybe you can repeat the question. I don't think I heard
19 you correctly.

20 Q. Sure. In preparation of your fee application and
21 executing the declaration, do you think that the fees and
22 expenses sought by Gibson Dunn need to comply with the terms of
23 this Court's General Order in the Matter of Procedures for
24 Complex Chapter 11 Cases?

25 A. Yes, I do.

1 Q. Okay. And did you certify that Gibson Dunn's fee
2 applications in fact comply with the guidelines set forth in
3 this document?

4 A. Did I certify what? I'm sorry. I don't mean to --

5 Q. That the fee applications in fact complied with the
6 provisions of the local rules or the general order relating to
7 complex Chapter 11 cases.

8 A. I'm sorry. I'm being too lawyer-like. I don't want to be
9 hung up on the term "certify." I'm sure I signed -- I'm sure I
10 signed a declaration saying that they comport with the
11 guidelines.

12 Q. Okay. You provided a sworn statement, under penalty of
13 perjury, that the fee application comported with these, were in
14 accord with these guidelines. Right?

15 A. Yes, I did.

16 Q. And also, are you familiar with the U.S. Trustee
17 guidelines for fee applications?

18 A. Generally, yes.

19 Q. Okay. Did you review those prior to the submission of
20 your declaration in connection with your fee application?

21 A. Yes, I did.

22 Q. Okay. And is it your sworn testimony that the fee
23 application comports with the U.S. Trustee's guidelines also?

24 A. Yes, it is, generally.

25 Q. Are there any ways in which it's not?

1 A. I'm sure you'll tell me, but --

2 THE COURT: I think you've done an ample job of
3 laying the foundation. Now, go ahead and stick in the sword,
4 if you've got one.

5 MR. HAIL: Okay. Fair enough, Your Honor.

6 THE WITNESS: Make sure it's a really sharp one,
7 though, so it doesn't hurt too much.

8 BY MR. HAIL:

9 Q. Let's look specifically at your declaration, and it's
10 Exhibit 38, which I have. And when I say -- I apologize, I'm
11 working off the one before it was filed yesterday. I think the
12 pagination and all the paragraph numbers are exactly the same.

13 A. I think they are, too.

14 Q. But if it's not, you know, by all means, let me know. If
15 you turn first to Paragraph 7, please, of the declaration --

16 A. Yes.

17 Q. -- you indicate that the rate of Gibson Dunn's
18 professionals are the same rates charged by Gibson to all of
19 its clients. Do you see that?

20 A. I do.

21 Q. Do you know if other Gibson Dunn clients have discounts
22 off Gibson Dunn's rates?

23 A. I don't know of any specifically, but I imagine that over
24 the course of the entire firm, there probably are some clients
25 who have discounts, yes.

1 Q. And do you know if other clients might have flat fees?

2 A. They very well may. I don't -- as I told you yesterday,
3 I'm not aware personally of any of them. I'd be surprised,
4 quite frankly.

5 Q. Do you know if there are any -- do you know if the general
6 order in connection with complex commercial cases required
7 those lower fees to be charged to the estate in this matter?

8 A. You're assuming that there are such lower fees. And the
9 answer is, I understand the general rule is that in bankruptcy,
10 you have to charge the same fees you charge to everybody, to
11 debtors. And if you're asking do I understand that, yes. I'm
12 not assuming there are any lower rates charged by Gibson,
13 because I'm not aware of any, as I just told you.

14 Q. Did you make any investigation of that before you signed
15 your declaration?

16 A. No, I did not.

17 Q. Okay. Now, if you take a look at Paragraph 8, you
18 indicate you personally reviewed the time entry of Gibson in
19 these cases. Is that right?

20 A. Yes, it is.

21 Q. And I don't think we need to burden everybody with all
22 those time entries, but you guys put together a list of
23 exhibits last night.

24 MR. HAIL: We need to see this big binder. Okay.

25 May I approach, Your Honor?

1 THE COURT: Yes.

2 BY MR. HAIL:

3 Q. Okay. If you could look that over, and I'll just have you
4 identify it.

5 A. Okay.

6 Q. And those are Gibson Dunn Exhibits 39 through 43? Is that
7 right? And can you just briefly describe what those are? I
8 think they're the time entries that Gibson Dunn filed in
9 connection with this case.

10 A. Yes. These are our monthly invoices. These are from our
11 monthly invoices, and they are the breakdown of time by day and
12 by timekeeper --

13 Q. Okay.

14 A. -- and by matter.

15 Q. I'm sorry.

16 A. And by matter.

17 Q. Okay. And are these the time entries that Gibson, that
18 you have personally reviewed in this case?

19 A. Yes.

20 Q. And have you reviewed each one?

21 A. I reviewed them when they were, when they were part of our
22 invoices. So I reviewed these in March of 2007 when they were
23 filed. Yes, I reviewed all of them.

24 Q. Okay. You should also probably look at Gibson Dunn 13,
25 which is where I'll spend more time, which is the one that was

1 filed in connection with the Fourth Interim Fee Application.

2 THE COURT: Exhibit 13?

3 THE WITNESS: Okay.

4 MR. HAIL: Gibson Dunn Exhibit 13, Your Honor. It's
5 in the black binder.

6 THE COURT: Okay.

7 THE WITNESS: Yes.

8 THE COURT: That's the big one.

9 BY MR. HAIL:

10 Q. And did you personally review those time entries before
11 they were submitted to the Court?

12 A. Yes.

13 THE COURT: This is February 1st through February
14 28th?

15 MR. HAIL: Well, I'll ask -- Your Honor, I believe it
16 is --

17 THE COURT: Or are we on 14, February --

18 MR. HAIL: No, Your Honor. The Exhibit 13 is a
19 collection of months. It's each six months. And the first
20 page says February. And I think if you flip back about 20
21 pages, there will be one for March, then there will be another
22 one for April, and things like that. So it's a collection of
23 them for the six-month period.

24 THE COURT: Okay.

25 MR. HAIL: Isn't that right, Ms. Coleman?

1 THE COURT: Well, under Exhibit 14 I have what's been
2 titled Exhibit 12.

3 MR. HAIL: No, I'm looking specifically, Your Honor,
4 at Exhibit 11A. And the first page says February 1st --

5 THE COURT: 11A is listed as Exhibit 13?

6 MR. HAIL: Yes, Your Honor.

7 THE COURT: Okay.

8 MR. HAIL: But, and Your Honor, I'm going to focus --

9 THE COURT: I'm sure that there's a reason for that.
10 But okay, go ahead.

11 BY MR. HAIL:

12 Q. Now, can you describe what Exhibit 11A is then,
13 Ms. Coleman?

14 A. Yes. Exhibit 11A is a compilation of the time entries
15 that are attached to our invoices. And it appears that
16 Exhibit 13 includes Exhibits 11A through 11F. So it's actually
17 the time entries for all six months, covered by the Fourth
18 Interim Fee Application.

19 Q. Now, you know that the local guidelines for reimbursement
20 of time do not allow grouping or clumping of time entries.
21 Correct?

22 A. The guidelines suggest that time should be broken down in
23 ways that are not grouped and clumped, yes.

24 Q. In fact, the guidelines specifically say, "No grouping or
25 clumping." That's under Time Records, Number 2, little, or I

1 guess Roman II, great big D. Correct?

2 A. I'm not looking at it, but I believe you.

3 Q. Okay. And in fact, the U.S. Trustee guidelines in
4 connection with the submission of time have a similar
5 provision, don't they?

6 A. I believe they do, yes.

7 MR. HAIL: Okay. And the U.S. Trustee guidelines,
8 Your Honor, are in the white binder at Exhibit 13, if we need
9 to go there.

10 BY MR. HAIL:

11 Q. But specifically, were you familiar with the U.S. Trustee
12 guidelines and these guidelines when you reviewed the fee
13 applications submitted by Gibson Dunn?

14 A. Yes.

15 Q. Okay. And in Paragraph 10 of your declaration, you
16 specifically say that the time entries comport with those
17 guidelines. Correct?

18 A. I have to go back to my declaration. Was that 38?

19 Q. It is.

20 THE COURT: It is.

21 MR. HAIL: Paragraph 10, which is on Page 4.

22 THE WITNESS: There's no Page 4 in my copy. I'm
23 sorry.

24 THE COURT: Well, it says whatever it says. Do you
25 think it doesn't say that? These questions aren't elicited to

1 suggest that she's lied in her affidavit. I mean, they say
2 whatever they say, don't they?

3 MR. HAIL: You're absolutely right, Your Honor. And
4 then --

5 THE COURT: Okay. So you assume -- you're
6 representing to the Court that she said they complied with the
7 local regs.

8 BY MR. HAIL:

9 Q. I'll read what my copy has.

10 A. It sounds like something I would say.

11 Q. "The compensation and expense reimbursement sought in the
12 Gibson application is in conformity with the Court's Guidelines
13 and the UST Guidelines, except as specifically noted in the
14 application."

15 And the Court's Guidelines is capital C, capital G, which
16 is defined in your declaration as the General Order provisions
17 that are Defendant's, HRC Exhibit 16. That's specifically what
18 I'm -- you don't have any reason to doubt it says that, do you?

19 A. No, I don't.

20 Q. Okay. Now, in the month in which you billed 400 hours and
21 Mr. Fromme billed 395 hours, did Gibson Dunn lump any time
22 together in a single time entry?

23 A. I imagine that we did.

24 THE COURT: Why don't you, I mean, if you are going
25 to show me some lump time, why don't you just go right to it,

1 rather than --

2 MR. HAIL: Okay. Let's go to --

3 THE COURT: Where is there lump time?

4 MR. HAIL: Let's go to Gibson Dunn Exhibit 13,
5 please, Your Honor, which is the 300 --

6 THE COURT: Number 13. What page?

7 MR. HAIL: Page number, let's start on Page 220.

8 THE COURT: 220, okay.

9 MR. HAIL: If you look on April 4th, 2008 --

10 THE COURT: 16 hours, draft proffers?

11 MR. HAIL: Yes, Your Honor.

12 THE COURT: And 20 hours, confirmation trial
13 preparation?

14 MR. HAIL: Yes, Your Honor.

15 THE COURT: And you wanted him to like break that 20
16 hours down to four hours on some witness, four hours on another
17 witness, four hours on another witness?

18 MR. HAIL: Yes, Your Honor. I believe that's what
19 the guidelines require, in order for you to evaluate whether or
20 not those services were necessary and beneficial to the estate.

21 BY MR. HAIL:

22 Q. Do you see the lumping together there?

23 A. I see the time entries.

24 Q. You see the time entries.

25 A. I'm going to leave it to the Judge whether those are

1 lumped improperly or not, but I see the time entries.

2 Q. Okay. How about you turn to page --

3 THE COURT: What day was the confirmation hearing?

4 MR. HAIL: Your Honor, I believe that we started on
5 the 8th and the 9th. Isn't that right?

6 THE WITNESS: I believe that's right. We had a
7 pretrial on the 1st, and then we started actually in
8 seriousness on the 8th.

9 THE COURT: Okay.

10 BY MR. HAIL:

11 Q. And we can go back actually to the first day of the month,
12 I mean, Page 212.

13 THE COURT: Okay.

14 BY MR. HAIL:

15 Q. "15 hours" for Ms. Coleman, "prepare for and attend
16 pretrial hearing. Prepare for confirmation trial, 12 hours."
17 There's an entry for Mr. Fromme, "16 hours, confirmation trial
18 preparation." Do you see those entries, Ms. Coleman?

19 A. I do.

20 Q. Okay. And it's your testimony that those comply with both
21 the local guideline, the local Southern District Guidelines and
22 the U.S. Trustee Guidelines. Correct?

23 A. I don't think that's an appropriate subject for my
24 testimony.

25 Q. Well --

1 A. We did our best. We did our best to comply. I think that
2 is an adequate time entry, given where we were in the case at
3 the time and given the Court's familiarity with the proceedings
4 that were going on at the time.

5 Q. Well, your declaration says that the Gibson application is
6 in conformity with the guidelines and the U.S. Trustee
7 guidelines. Right?

8 A. Yes, it does.

9 Q. Okay. You want to take a look, Your Honor -- or
10 Ms. Coleman, why don't you turn to April 26th and April 28th,
11 Pages 243 and 244 of Gibson Dunn Exhibit 13.

12 A. Okay, I'm there.

13 Q. April 28th, "13 hours, prepare for confirmation trial,
14 Ms. Coleman." Do you see that?

15 A. Yes, I do.

16 Q. "18 hours, Mr. Fromme, attend and participate in trial re:
17 confirmation." Do you see that?

18 A. Yes, I do.

19 Q. And if you look down the page, April 29th, "Mr. Fromme,
20 attend and participate in trial re: confirmation, 18 hours."
21 Do you see that?

22 A. Yes.

23 Q. That's the same time entry for Mr. Fromme from the 18th to
24 the 19th, isn't it?

25 A. Yes, it is.

1 Q. And if you take a look back at Page 243 --

2 A. Yes.

3 Q. -- April 26th, 2008, "Ms. Coleman, 14.5 hours, prepare for
4 confirmation trial." Do you see that?

5 A. I do.

6 Q. "Mr. Fromme, 17 hours, prepare for continued confirmation
7 trial." Do you see that?

8 A. I do.

9 Q. April 27th, "Ms. Coleman, 15 hours, prepare for
10 confirmation trial." Correct?

11 A. Yes.

12 Q. April 27th, "Mr. Fromme, 17 hours, prepare for continued
13 confirmation trial."

14 A. Yes.

15 Q. Did I read that right?

16 A. Yes, I do.

17 Q. Have you read all of the April time descriptions for
18 whether or not they complied with the U.S. Trustee Guidelines
19 and the Southern District Guidelines?

20 A. I have read them all.

21 Q. Did you read them to -- did you mean to say they comport
22 with the guidelines as written?

23 A. Yes.

24 Q. Okay. Are you a member of the Bar of the State of New
25 York?

1 A. Yes, I am.

2 Q. Have you ever practiced in the Southern District of New
3 York?

4 A. Yes, I have.

5 Q. Okay. Are you familiar with the Southern District of New
6 York Bankruptcy Court's procedures in connection with time
7 entries?

8 A. Generally, yes.

9 Q. Okay.

10 MR. HAIL: And, Your Honor, those are at Exhibit 15,
11 the Southern District of New York's procedures.

12 BY MR. HAIL:

13 Q. If you wouldn't mind turning to Page 4 of those
14 procedures, and I'll specifically focus on Footnote 2. Do you
15 see that footnote, Ms. Coleman?

16 A. Yes, I do.

17 Q. And that footnote is an indication of time entries that it
18 considers to be grouped or lumped. Do you see that?

19 A. I do.

20 Q. And at the bottom down there are a series of time entries.
21 Do you see those?

22 A. I do.

23 Q. Would you agree with me, those are similar to the time
24 entries in April 2008 submitted by Gibson Dunn in this case?

25 A. In the sense that they're short and have a lot of hours in

1 them, yes, absolutely.

2 Q. Okay. Do you know how many hours -- well, let's turn to
3 your declaration again, please. I believe it's on Paragraphs
4 68 and 71 -- 68 through 71, and 70 -- it goes on after that, I
5 should say. No, it's 68 through 71 exactly. I'm sorry.

6 A. I don't have the page --

7 THE COURT: We're on her proffer, 68 through 71?

8 MR. HAIL: Absolutely. Yes, Your Honor. And it's
9 Exhibit 38.

10 THE COURT: Page 12? Or where is it?

11 MR. HAIL: Page 12. Yes, Your Honor.

12 THE WITNESS: I actually don't have the Page 12.

13 THE COURT: Yeah, I don't have Page 12 either.

14 THE WITNESS: Nor do I have Page 14. I think I only
15 have odd pages here.

16 THE COURT: Okay. I only have odd pages, too.

17 MR. HOLZER: I've got some corrected copies on the
18 way, Your Honor. And I apologize. We copied those, and I
19 suspect it got lost in the --

20 THE COURT: They were double-sided, and they're not
21 supposed to have double-sided for the Court.

22 MR. HOLZER: Right.

23 THE COURT: And so you ended up thinking they were
24 single-sided, but only copied, and only copied those.

25 MR. HOLZER: Well, didn't actually make them myself,

1 but that's my guess.

2 THE COURT: Okay.

3 THE WITNESS: All the good stuff is on the odd pages
4 anyway, Your Honor.

5 (Counsel conferring off the record.)

6 MR. HOLZER: They should be here in about ten
7 minutes.

8 MR. HAIL: Well, we have one that is -- we have one
9 corrected here.

10 MR. HOLZER: It's on the docket, Your Honor, if we
11 could pull it up on the system.

12 MR. HAIL: We have it -- it's the same in another
13 document.

14 THE COURT: Well, what do you want her to say?

15 MR. HAIL: I want her to say that -- she's testified
16 the reason they were grouped and lumped was because to provide
17 further description could disclose the client's strategy and
18 attorney work product, which would be inappropriate.

19 THE COURT: Well, and that's pretty standard, isn't
20 it?

21 MR. HAIL: I don't think so, Your Honor. I think
22 that we'll get into that, but I wanted to see if that was her
23 rationale for providing, you know, three-word answers for,
24 three-word time descriptions for 10, 15, 20 hours of time over
25 the period of a month.

1 THE WITNESS: I believe my affidavit, my declaration
2 says that's one of the reasons that those time entries are
3 appropriate. But --

4 MR. HAIL: Well, let me --

5 THE WITNESS: -- I certainly did articulate that
6 reason.

7 MR. HAIL: Can I approach, Your Honor, and show her
8 her declaration?

9 THE COURT: Sure.

10 MR. HAIL: Okay. And I think this is the corrected
11 version.

12 BY MR. HAIL:

13 Q. And I'm specifically referring to Paragraph 71 of your
14 declaration.

15 A. Yes.

16 Q. And the second sentence says, "A description of preparing
17 for confirmation hearing, as an example, is sufficient, because
18 to provide further description could disclose the client's
19 strategy and attorney work product, which would be
20 inappropriate." Did I read that correctly?

21 A. You did. Then the next sentence says, "Furthermore, this
22 Court witnessed firsthand what occurred at the hearings."

23 Q. We'll get into that, too. Yes, that's exactly right. And
24 it actually continues and says, "and Gibson's level of
25 preparation for and involvement in those hearings." Right?

1 A. Yes, it does.

2 Q. Okay. Now, the first question I have is how do you
3 personally keep your time at Gibson Dunn?

4 A. I keep my own time on my computer. I put a note in
5 Outlook on my computer, and I update it at the end of the day
6 or every couple of days, depending on how busy I am.

7 Q. And the time descriptions that were submitted with the
8 various fee applications that have the specific description of
9 the services rendered were taken from your time records and the
10 other lawyers. Right?

11 A. Yes, that's correct. They're entered into our system, and
12 then they are spit out onto an invoice.

13 Q. And I think you testified yesterday a paralegal reads
14 through the application, fixes typos, cleans things up. Right?

15 A. Yes, calls timekeepers with any questions, asks people if
16 they want to submit any more details sometimes. Yeah,
17 generally that's the procedure.

18 Q. And the time records submitted with the Court are not
19 redacted time records of other entries that might be existing
20 out there somewhere else. Right?

21 A. No, unless they, unless they specifically say they're
22 redacted, no, these are not redacted.

23 Q. Right. So the time records that are actually submitted
24 are, this is not a redacted version of something else.

25 Correct?

1 A. No, it's not.

2 Q. Okay. And in fact, there's no records out there that if
3 we wanted to figure out, for example, what exactly somebody did
4 with a confirmed trial preparation, there's not another day
5 note out there that we can go figure out exactly what they did
6 on that date. Right?

7 A. I can't speak for any time keepers other than myself. In
8 my own case, there would not be, no.

9 Q. Okay. So the Court can't take, you know, sort of an
10 unredacted view of, particularly of your time records and look
11 at them in camera and see what you did, and that way it
12 wouldn't violate any privilege. Is that right?

13 A. There is no such written record of that, no.

14 Q. Okay. Do you know how much time is, that LCC identified
15 that was either grouped or lumped together or had inadequate
16 description?

17 A. How many hours?

18 Q. The total value of the time is what I --

19 A. I don't recall.

20 Q. Okay. Would it surprise you if it was \$2.4 million?

21 A. That sounds close to it, yes.

22 Q. Okay. Now, if you come back up, in Paragraph 70 is, of
23 your declaration -- which I guess we still don't have a
24 corrected copy of it for Your Honor. The last sentence of that
25 paragraph says, "The Court can assess the reasonableness of the

1 fees charged in preparing for a hearing by assessing what the
2 lawyers did in the courtroom at the hearing." Did I read that
3 correctly?

4 A. It does. And the first sentence, which I think it's
5 incomplete without, are, "Many of the time entries to which HRC
6 is objecting are surrounding the contested hearings in this
7 case."

8 Q. And the sentence that you put, the last sentence, is very
9 similar to the last sentence in Paragraph 71, which is that the
10 Court can witness what happened at the hearings. Right?

11 A. The same idea is expressed, sure.

12 Q. Now, at the confirmation hearing, you didn't open.
13 Correct?

14 A. I did not.

15 Q. Mr. Fromme did not open. Correct?

16 A. He did not.

17 Q. You didn't take any witness. Correct? On direct.

18 A. That's correct, I did not.

19 Q. You didn't cross-examine any witness, did you?

20 A. No. I'm not a litigator.

21 Q. Okay.

22 A. I did the closing argument.

23 Q. Is that the only time you specifically addressed the
24 Court, to your recollection, other than miscellaneous matters,
25 I would say, throughout the proceeding? Is that the only time

1 you argued to the Court? How about that?

2 A. In the confirmation hearing?

3 Q. Yes.

4 A. I believe that's correct, although there may have been
5 some other arguments and things that came up during the
6 confirmation hearing, as there tended to be in this case.

7 Q. Now, you're not a valuation expert. Right?

8 A. No, I'm not.

9 Q. And in fact, the valuation side of this case was the
10 largest component of the case. Right?

11 A. I don't think I would agree with that. I think that value
12 was the most important issue in the case. Mr. Doran, who is a
13 litigator, was tasked with first chairing the valuation aspect,
14 and I was first chairing the bankruptcy law aspects.

15 Q. Mr. Doran isn't a valuation expert either, is he?

16 A. No.

17 Q. Okay. And --

18 A. He might be by now actually.

19 Q. So how many other timekeepers outside of the courtroom did
20 Gibson Dunn have that it did not disclose the descriptions
21 because to disclose such description would disclose the
22 client's strategy and attorney work product? Do you know?

23 A. I'm sorry, I don't think I can answer that question.

24 Q. All right.

25 A. What are you getting at?

1 Q. Gibson Dunn had other lawyers outside the courtroom
2 working during the various hearings. Correct?

3 A. It did, yes.

4 Q. And do you know how many of those lawyers there was a
5 description that was netted because to provide a further
6 description would disclose the strategy and attorney work
7 product?

8 A. I would say two or three.

9 Q. And who would those individuals be?

10 A. Mr. York was here with us, but not in the courtroom. He
11 was working. Mr. Waters was here for a couple of the days, one
12 of the trial weeks. And I believe Mr. James Knight also came
13 for one of the trial weeks, but not both.

14 Q. Now, there are time entries in which you did break down
15 tasks by hours and increments, aren't there?

16 A. Quite a few, yes.

17 Q. And same for Mr. Fromme. Correct?

18 A. Mr. Fromme almost always is perfect with his time keeping,
19 so yes, certainly.

20 Q. And Mr. Doran also similarly, during the confirmation
21 trial, actually broke down, had some time entries where he
22 broke it down by hours and by task. Correct?

23 A. If you say so. I don't recall specifically that he did,
24 but --

25 Q. Why don't you take a look at Page 231 of Gibson Dunn

1 Exhibit 13, please.

2 A. I'm getting lost in the forest of paper, but okay.

3 Q. It should be in the black notebook. I understand.

4 A. 231, did you say?

5 Q. 231. April 10th.

6 A. Yes.

7 Q. Now, do you see that there are 17 hours billed by
8 Ms. Coleman?

9 A. I do.

10 Q. And then there's actually 14.9 billed for prepare and
11 participate in confirmation trial, but after that, you have a
12 series of two entries, three entries, broken it down by other
13 conferences and tasks. Correct?

14 A. Yes, I do.

15 Q. And if you actually turn the page to 232, we have similar
16 entries for Mr. Doran, Mr. Fromme, and Mr. York. And
17 Mr. Knight, too, for that matter.

18 A. Yes, I see that.

19 Q. Okay. Now, why were these entries specifically disclosed
20 and, or broken down by the way these were, and other entries
21 were not?

22 A. You know, quite honestly, if I would have to guess, I
23 would guess that on that day we were slightly less tired, maybe
24 had gotten more than two hours of sleep, and had more time to
25 record our time in a more fulsome manner.

1 Q. Now, the 400 hours that you worked in the month of April,
2 you didn't bill any travel time to the matter coded "travel."
3 Correct?

4 A. I believe that is correct.

5 Q. Okay. Do you know if Mr. Doran billed any travel coded
6 time in April 2008?

7 A. I just don't know, sir.

8 Q. Okay. And well, we can look at that, if you want to take
9 a gander at Page 247 of Gibson Dunn Exhibit 13.

10 A. Yes.

11 Q. And that is the matter travel time for the month of April.
12 Correct?

13 A. Yes.

14 Q. And I don't see any time for Mr. Doran or yourself.
15 Correct?

16 A. That's correct. I don't see any either.

17 Q. Now, I know you did travel during the month of April.
18 Right?

19 A. Oh, certainly.

20 Q. Okay. And was the time not billed? Or where is that
21 time?

22 A. I don't think I billed it.

23 Q. Okay. So the 400 hours you worked, in addition to that,
24 we had various travel hours. Correct?

25 A. That's correct.

1 Q. All right.

2 A. Only -- let me supplement that. My general practice in
3 the case, after the first few months, was to not put down any
4 time for travelling when I was not also working on one of the
5 identified matters in the case. So if I was working on
6 preparing for a deposition or preparing for a hearing and
7 traveling at the same time, I would bill it to the appropriate
8 time, because I was working. If, on the other hand, I was in a
9 taxi going to downtown Houston, I would not bill that time as
10 nonworking travel time, which saved the estate a lot of money,
11 given how much I travelled.

12 Q. If you take a look at your declaration, please, Paragraph
13 27.

14 A. I hope it's on an odd page.

15 Q. Well, you actually have a complete copy, I think.

16 A. Oh, yes. That's right. I do now. Wait, do I? Oh,
17 you're out of luck. It's on an even page. Okay. Where is the
18 full copy?

19 Q. I thought I left one up there with you.

20 A. Is it in this binder?

21 Q. Yes.

22 A. Yes. This is the one that has the double-sided. Okay.
23 Which paragraph?

24 Q. Paragraph 27. Well, let's start with Paragraph 24 then.

25 A. Okay.

1 Q. Paragraph 24 indicates that ScoPac retained Mr. Yerges of
2 KPMG in June 2007. Correct?

3 A. It does say that, yes.

4 Q. And what value did Mr. Yerges put on the timberlands in
5 September 2007?

6 A. I believe it was in the mid 800 millions, something around
7 850 million or so.

8 Q. Okay. And in fact, in September ScoPac, your client,
9 proposed a plan premised on that valuation. Correct?

10 A. Yes. It was a joint plan with PALCO, but yes, on
11 September 30th that year.

12 Q. Fair enough. And there were another component of that
13 value that was part of that plan. Correct?

14 A. Yes.

15 Q. Okay.

16 A. Yeah, I'm with you.

17 Q. And that included Mr. Mundy's testimony -- well, let me
18 rephrase that question better. That included the Redwood
19 Ranch. Correct?

20 A. It did.

21 Q. It also included the concept of selling the MMCAs.
22 Correct?

23 A. Yes, it did.

24 Q. And it contemplated exit financing provided by somebody.
25 Right?

1 A. Yes, it did.

2 Q. And did it contemplate a equity contribution or capital
3 injection by Maxxam?

4 A. I believe that it did, yes.

5 Q. Okay. Had Maxxam agreed to make such equity contribution
6 or capital contribution in connection with that plan?

7 A. I am going to assume. I do not know, but I'm going to
8 assume that Maxxam would not have allowed a plan to be proposed
9 if it had not agreed to make the equity contribution reflected
10 that it was going to make in that plan.

11 Q. Now, did you work with Mr. Mundy?

12 A. Dr. Mundy, yes, I did.

13 Q. Dr. Mundy. You corrected me yesterday. I forgot. And
14 had you seen what -- Dr. Mundy valued the opportunity presented
15 by the Redwood Ranch. Correct?

16 A. He did not do a valuation, as we talked yesterday. He
17 merely gave a, an estimate of how much it could be sold for if
18 it were developed as the Redwood Ranch.

19 Q. And what was that estimate, if you remember?

20 A. I believe it was \$5 million per lot. And I don't remember
21 the number of lots. I think it was something like 120 lots,
22 for 5 million per lot.

23 Q. And did he also value the MMCAs?

24 A. He provided a sale price for the MMCAs.

25 Q. And what was that?

1 A. 298 million, I believe.

2 Q. Now, did you ever take Mr. Mundy's conclusions about the
3 value or whatever he said about the Redwood Ranch and the MMCAs
4 and take them to any other real estate professional and say,
5 "Does this seem right to you?"

6 A. No, I did not.

7 Q. Did anyone at Gibson Dunn do that?

8 A. Not that I'm aware.

9 Q. Okay. And before this plan was proposed, had you
10 consulted with Humboldt County on that plan?

11 A. The September 30th plan?

12 Q. Correct.

13 A. I personally did not consult with Humboldt County on that
14 plan, no.

15 Q. Do you know if anybody from Gibson Dunn did?

16 A. I'm not aware that anybody from Gibson Dunn would have.
17 That would not have been something that we would have, we would
18 have done given the way division of labor happened in this
19 case. That would be something for Mr. Bacik or Mr. O'Brien or
20 Mr. Barrett to have done.

21 Q. Is it fair to say that Humboldt County did not like that
22 plan?

23 A. That's certainly the impression they gave.

24 Q. Okay. And in fact they passed a local emergency ordinance
25 criticizing the plan.

1 A. They did, but then they didn't extend it after 45 days.
2 But yes, they did.

3 Q. Was that plan ever voted on by anyone?

4 A. Ever voted on by anyone? That's a broad question. I'm
5 not aware that it was.

6 Q. Okay. Was a disclosure statement ever approved for that
7 plan?

8 A. No, I don't believe it was. The plan was amended in
9 January of the next year.

10 Q. Now, let's roll the picture forward to the January time
11 frame. Correct? And it's just where I'm going.

12 A. Okay.

13 Q. ScoPac proposed two plans in January. Correct?

14 A. Yes. On January 30th, the Court had ordered everybody to
15 file their plans, and ScoPac was the co-proponent of a joint
16 plan with PALCO, and then its own stand-alone plan.

17 Q. At the time it proposed those two plans, had it received
18 any different valuation advice either from Mr. Yerges,
19 Mr. Mundy, or any other valuation expert that it had retained?

20 A. I think Mr. Yerges -- no, I take that back. Mr. Yerges
21 finally, he updated his report and changed the number by a very
22 small factor, something like \$10 million. But that wasn't
23 until March. So no. The January numbers, the January plans
24 were based on the same valuation numbers that we had in
25 September.

1 Q. Okay. Now, Mr. Mundy had talked about the MMCA, had
2 valued the MMCAs at \$298 million. Isn't that right?

3 A. You keep saying "Mister," and you keep saying "valued."
4 Dr. Mundy said that he thought there were circumstances under
5 which you could sell the MMCAs for \$298 million.

6 Q. Okay. And you're familiar with UBS's, or I guess PALCO
7 ScoPac's retention of UBS prior to 2007. Correct?

8 A. Yes. I know that PALCO and ScoPac had retained UBS in
9 2005. I was involved in that process, and that was a, that was
10 advice with respect to dealing with the noteholders. I was not
11 involved when UBS was retained apparently to market the
12 properties in 2006. I just didn't have any personal
13 involvement with that.

14 Q. Did you have any knowledge of UBS's success, or lack
15 thereof, in marketing either the timberlands or the MMCAs?

16 A. No, I really don't. I didn't do very much for this client
17 in 2006.

18 Q. Did you ever take Mr. Mundy's \$298 million number for the
19 MMCAs and go back and look and see the results of UBS's
20 marketing efforts?

21 A. No.

22 Q. You didn't compare one with the other?

23 A. No, I did not.

24 Q. Okay. Did anyone at Gibson Dunn do that, to the best of
25 your knowledge?

1 A. No. I believe that Dr. Mundy's deposition was taken, and
2 I'm sure that questions were asked in the presence of Gibson
3 Dunn attorneys, but I don't believe anybody at Gibson ever
4 undertook to take the sale price that Dr. Mundy said in his
5 expert opinion was attainable and compare it to some previous
6 sale prices, no.

7 Q. Okay. Do you remember when Dr. Mundy's deposition was?

8 A. Well, it was taken --

9 Q. By month.

10 A. It was in October of 2007.

11 Q. Okay.

12 A. I believe.

13 Q. Was there another one in March of 2008?

14 A. Yes, there was.

15 Q. Okay. Now, talking about the two plans proposed by
16 ScoPac, one was a joint plan with PALCO. Correct?

17 A. That's correct.

18 Q. And the joint plan required the consent of PALCO's
19 creditors. Correct?

20 A. The joint plan did not provide for paying Marathon
21 \$75 million in cash in full at confirmation. And therefore, in
22 order to accept that treatment, Marathon would have had to
23 consent to it at some point. It didn't consent then. It could
24 have changed its vote later.

25 Q. Did you know that at the time that you proposed that plan,

1 that Marathon did not support that joint plan?

2 A. I was aware that Marathon was not supportive of the plan
3 at the time it was filed. However, people from Marathon
4 informed people at Blackstone at approximately that time that
5 there were circumstances under which Marathon could accept that
6 plan and would change their vote.

7 Q. Did you ever talk to Marathon about that before that plan
8 was filed?

9 A. Did I ever talk to Marathon about it?

10 Q. Correct.

11 A. No. Blackstone did.

12 Q. And did Marathon actually vote on the joint plan?

13 A. I believe that they did cast a vote, yes.

14 Q. And how did they vote?

15 A. I believe they voted "no" initially.

16 Q. And at the time they voted "no," did they ever change
17 their mind? Did they ever vote "yes" for it?

18 A. They never did, but they could have.

19 Q. Okay. Did they ever indicate any willingness ever to vote
20 for that plan?

21 A. I am told that they did. I am told that they told
22 Blackstone that under certain circumstances --

23 Q. When?

24 A. -- if some changes were made -- I am told that happened in
25 about March of 2008.

1 Q. When did they -- did they ever indicate after March 2008
2 they would ever support that plan?

3 A. Not that I'm aware of, but --

4 Q. On the first day of confirmation, do you remember us
5 talking about the joint plan and Marathon announcing they would
6 not support that?

7 A. I remember Mr. Neier making some fairly dramatic
8 statements on that point, yes.

9 Q. Okay. And turning your attention then to the stand-alone
10 plan, do you remember what the stand-alone plan was?

11 A. Sure.

12 Q. Okay. And the stand-alone plan was premised on the
13 valuations by Mr. Yerges and Dr. Mundy. Correct?

14 A. Yes, it was, although --

15 Q. Now --

16 A. Although it was, it was really premised on Mr. Yerges'
17 valuation, because the stand-alone plan did not involve any
18 value, did not require any value, the Court to accept any value
19 proposed by Dr. Mundy.

20 Q. The stand-alone plan required exit financing. Correct?

21 A. It did.

22 Q. And that exit financing was never agreed upon, was it?

23 A. Well, it depends on how you define agreed upon. Exit
24 financing --

25 Q. There was no signed commitment letter. How about that?

1 A. That's not correct. There was a signed commitment letter
2 from the exit financier. Maxxam never signed it.

3 Q. Well, the party who was allegedly lending, borrowing the
4 money and being obligated to repay it never then executed the
5 exit financing. Correct?

6 A. That's correct, because they settled with Marathon.
7 That's right.

8 Q. Well, was there ever any indication they were ever going
9 to sign it that you heard of?

10 A. Absolutely.

11 Q. Who told you that?

12 A. Emily Madison.

13 Q. What did Emily tell you?

14 A. She told me that I should go into court and announce that
15 we had exit financing because we were ready to go with it. And
16 I told her that I wasn't going to do that until she had signed
17 it. And she said, "Okay, we haven't signed it yet. Just wait
18 a couple of days."

19 Q. Did you ever see that letter?

20 A. Yes.

21 Q. You saw -- you saw the signed commitment letter by the
22 lender given to Maxxam.

23 A. I did.

24 Q. Okay. And did you ever see Maxxam sign it?

25 A. No.

1 Q. Okay.

2 A. I don't believe Maxxam ever did sign it.

3 Q. And was Maxxam ever -- the stand-alone plan also required
4 Maxxam to inject capital into the businesses. Right?

5 A. No.

6 Q. No?

7 A. No, it did not.

8 Q. Did the exit financing require that capital injection?

9 A. The exit financing required that Maxxam borrow additional
10 monies from the exit financier and then turn around and make a
11 contribution with those additional borrowed monies.

12 Q. Did Maxxam ever indicate or commit to doing that
13 transaction?

14 A. They never signed the commitment letter.

15 Q. Now, did the Indenture Trustee approve the stand-alone
16 plan?

17 A. No, it did not.

18 Q. They were not very wild about that plan. Correct?

19 A. No, they weren't.

20 Q. And in fact, the stand-alone plan was ultimately
21 withdrawn. Correct?

22 A. Yes, it was, because we lost our exit financing and didn't
23 have another source.

24 Q. And the joint plan was also withdrawn. Correct?

25 A. Yes.

1 Q. All right. Now, there was never any written analysis or
2 any written document we can look at that discusses the
3 likelihood of success and the benefit to the estate from
4 proposing those two plans, was there?

5 A. I do not believe that anybody ever wrote a memo talking
6 about the likelihood of success, so --

7 Q. Did you ever write anything to the board of directors of
8 ScoPac indicating that these plans, you know, may succeed,
9 might not succeed, but it's the best thing to go do, or
10 anything like that? Is there any written document I can look
11 at?

12 A. I believe that all of our discussions about that were
13 oral. There's an agenda for a board meeting, but I believe all
14 our discussions were oral about the likelihood of success of
15 confirmation.

16 Q. Now, do you recall at some point in the process that MRC
17 changed, the MRC Marathon plan changed the amount of money it
18 gave to the noteholders?

19 A. Yes, I do remember. I do recall that.

20 Q. Okay. And when do you recall that taking place?

21 A. I don't specifically recall. I believe it was between the
22 two weeks of confirmation hearings. But I don't recall
23 specifically.

24 Q. How about May the 1st, the day of the PALCO settlement on
25 the record and all that. Do you recall it was part of that

1 deal?

2 A. I actually thought --

3 Q. Or seemed contemporaneous?

4 A. I thought it was a couple of days before that. But I'm
5 not completely sure.

6 Q. Okay. And MRC changed its offer such that it gave the
7 noteholders \$530 million. Correct? In cash.

8 A. Yes --

9 Q. Well, subject to various adjustments.

10 A. Yes. I believe that's correct.

11 Q. And after that point in time, subject to the technical
12 adjustments in the confirmation order, MRC never changed the
13 amount of money it was giving to the creditors, the noteholders
14 or Bank of America. Correct?

15 A. That's my understanding.

16 Q. Are you aware, do you think there's anything else that
17 might be out there?

18 A. No.

19 Q. Okay. Do you remember when there was a motion made by
20 Gibson Dunn for a Debtor-in-Possession financing given, or loan
21 by Lehman Brothers?

22 A. Yes.

23 Q. Okay.

24 A. ScoPac requested --

25 Q. When generally was that?

1 A. My recollection is that the, there was a hearing in early
2 June seeking a work fee, or maybe it was late, it was late May,
3 seeking a work fee for that DIP loan, which was granted. And
4 then there was a, there were several hearings set in June, but
5 we never actually got there.

6 Q. And in fact, as part of that Lehman DIP fee, one of the
7 purposes of that DIP fee was to pay ScoPac's professional fees.
8 Correct?

9 A. The purposes of that DIP fee? No.

10 Q. Sorry, the DIP loan then. One of the uses of the DIP loan
11 would have been to pay ScoPac's professional fees. Correct?

12 A. One -- it was -- there's a line item in the budget for
13 payment of professional fees, yes.

14 Q. That would have been one of the uses of the cash. Right?

15 A. Yes.

16 Q. And in fact, \$5 million of that DIP loan was going to go
17 to Gibson Dunn. Right?

18 A. That was what the budget proposed, yes.

19 Q. And at that point in time, had the Court executed a
20 confirmation order?

21 A. No, I don't believe so.

22 Q. And at the time that we had the hearings on the DIP loan
23 and all that, was there a signed confirmation order?

24 A. No, there was not.

25 Q. Do you remember when the confirmation order in this case

1 was signed?

2 A. July 8th.

3 Q. Do you remember Findings of Fact and Conclusions of Law on
4 June the 6th?

5 A. Yes. That's when the Court announced its initial
6 findings.

7 Q. Okay. And was the sequence of events relating to that DIP
8 loan after the Findings of Fact and Conclusions of Law were
9 announced?

10 A. No. The DIP hearing was -- in fact, I believe the Court
11 announced its Findings and Conclusions on the day that we were
12 to have the hearing for approval of the DIP. And the Court
13 said that, "In light of the fact that I have now announced my
14 Findings and Conclusions, which raised some questions that MRC
15 is going to have to answer, I'm not going to hold the hearing
16 on the DIP because it may not become necessary."

17 Q. Do you remember the testimony of the ScoPac chief
18 financial officer, Gary Clark, about ScoPac's financial
19 condition?

20 A. Well, it was actually right after he resigned, at Maxxam's
21 direction. But yes, I do recall that.

22 Q. Okay. And when did Mr. Clark testify that there was
23 enough cash to run the business through?

24 A. Mr. Clark on, I believe it was on May the 1st, testified
25 that assuming that PALCO continued to pay for the logs, ScoPac

1 could survive through the summer. And that was on May 1st.

2 Q. And is there seasonality involved in log sales? Do you
3 remember?

4 A. Yes, I do, and there is.

5 Q. And is the summer generally a cash rich time for ScoPac?

6 A. No. The logs start really coming in and getting harvested
7 in June, in late June and July. And there are a lot of harvest
8 costs incurred, which as I'm sure everybody will recall, ScoPac
9 was bearing itself, rather than having PALCO bear them. So
10 ScoPac actually has a, is a big user of cash in the early
11 summer months. And then the logs start getting sold and PALCO
12 starts paying for them, and it becomes, and ScoPac becomes cash
13 rich in August, September, October. Those are its high cash
14 months.

15 Q. Fair enough. So August-September is when it would have
16 been cash rich. Correct?

17 A. That would be the idea, yes.

18 Q. And Mr. Clark had testified, I think, that there was
19 enough cash at ScoPac to run the business through the end of
20 July. Right?

21 A. Assuming that PALCO paid ScoPac for logs in May and June
22 and July, yes.

23 Q. Okay. If we turn to --

24 A. Let me just add to that answer, though. I do not -- I
25 believe that under questioning Mr. Clark said that he had

1 actually not prepared that, prepared a budget, but he was
2 testifying based on his thumbnail understanding of what the
3 cash would look like. But it was not based on any rigorously
4 prepared budget.

5 Q. Well, I think his testimony is what it is, and I don't
6 recall it the same way. But I'm not going to argue with what
7 it is, given what the record said.

8 Let's take a look at Paragraph 107 of your declaration,
9 please, which is Page 20.

10 MR. HOLZER: Before we get into that, I have
11 corrected copies, Your Honor, if you want to --

12 THE COURT: All right. You may submit them.

13 MR. HOLZER: I'll hand one up to you and give one to
14 Ms. Coleman.

15 THE WITNESS: That's good, because Mr. Hail was
16 asking me only about things that are on even numbered pages.

17 MR. HAIL: Believe it or not, I did not plan that.

18 THE WITNESS: Actually, let's do it in this one, too.

19 THE COURT: How much longer are you going to be with
20 this witness?

21 MR. HAIL: I anticipate maybe 15 more minutes, Your
22 Honor.

23 THE COURT: All right.

24 MR. HAIL: Maybe half an hour.

25 THE COURT: All right.

1 BY MR. HAIL:

2 Q. Do you see Paragraph 107, Ms. Coleman?

3 A. Hold on. Yes, I do.

4 Q. Paragraph 107, there's a -- the last sentence says, "The
5 rates of Gibson's litigation support professionals are the same
6 rates charged by Gibson to all of its clients, including
7 matters not involving bankruptcies." You see that? And then
8 it goes on, but --

9 A. Yes, I do.

10 Q. -- I'm not interested in the last part. In fact, do you
11 know if there are other Gibson Dunn clients who have discounts
12 for litigation support professionals?

13 A. As I told you yesterday, it's a big firm, and I don't, I
14 do not personally know of any, but it wouldn't shock me to find
15 out that somebody has one.

16 Q. Did you look into that before signing a declaration that
17 it's the same rate charged to all of Gibson Dunn's clients?

18 A. No, I did not.

19 Q. Okay. And if you actually take a --

20 THE COURT: Well, you have pro bono clients, don't
21 you?

22 THE WITNESS: We have pro bono clients.

23 THE COURT: Okay. So they get charged less, don't
24 they?

25 THE WITNESS: Oh, yes, they do.

1 THE COURT: Okay.

2 BY MR. HAIL:

3 Q. If you take a look back at Paragraph 9 of your affidavit.

4 A. Yes.

5 Q. "The expenses charged by Gibson Dunn to ScoPac are the
6 same rates that Gibson charges its clients in nonbankruptcy
7 matters." Do you see that?

8 A. I do.

9 Q. Now, are there other clients who have specific expense
10 guidelines, to your knowledge?

11 A. Oh, I'm sure there are. I've seen copies of them from
12 time to time, sure.

13 Q. Are there maybe caps on the amount you can spend on hotels
14 and travel and meals and things like that?

15 A. I've never seen anything like that, but I've certainly
16 seen copying. And we won't, you know, we won't pay for Westlaw
17 above X amount, things like that, sure.

18 Q. Okay. And those policies and those limitations weren't
19 applied in this case, were they?

20 A. No, they weren't. They were not requested by the client.

21 Q. And if you take a look at the first bullet point, "Gibson
22 has not charged ScoPac for any of its office overhead, as
23 defined in the guidelines." Did I read that right?

24 A. You did.

25 Q. Okay. Now, there's no guidelines definition here, and

1 just take a look back up, did you mean the U.S. Trustee
2 Guidelines or the Court Guidelines? Or do you know?

3 A. I don't know, but I assume I am talking about both sets of
4 guidelines.

5 Q. Okay. Do you know if the local court guidelines define
6 overhead?

7 A. I believe they give examples of overhead, which I'm sure
8 are not, I'm sure they're not intended to be exclusive.

9 Q. Okay. And in fact, take a look at the fourth bullet
10 point. "Gibson has not employed any other professional person
11 to assist it in representing ScoPac in these Chapter 11 cases
12 and has not included any fees of other professionals as
13 expenses." Did I read that correctly?

14 A. You did.

15 Q. And who are the professionals that you're referring to
16 here in this declaration?

17 A. Here I'm talking about the kind of professionals for whom
18 you'd have to file a separate application under 504(d).

19 Q. And that is?

20 A. Other law firms, I'm not talking about, I'm not talking
21 about contract, the contract document reviewers who are lawyers
22 who work in Gibson Dunn's office but are not technically Gibson
23 Dunn employees, because we hire them from an agency, but they
24 are, they're on our litigation support team. They work in our
25 offices year round on different cases, and they happened to

1 work on this case during this application period. But they are
2 not other professionals for whom I'd have to file a separate
3 fee application. And the case law on that is in our brief.

4 Q. Well, that wasn't my question, but we'll get to those
5 people. The contract attorneys are not included in this
6 definition of any other professional person. Correct?

7 A. Yes. No, that's correct, they are not included.

8 Q. All right. And in fact, Gibson Dunn paid a fee to a
9 contract lawyer firm for the services of those contract
10 lawyers. Correct?

11 A. Yes. Yes, we did.

12 Q. Okay. We'll get to the contract lawyers in a -- well,
13 let's go to them now then actually. Why don't we take a look
14 at Paragraph 110 of your affidavit -- I'm sorry -- of your
15 declaration.

16 A. Yes, okay.

17 Q. And I think we had concluded earlier that we sought, or
18 that you sought \$554,000 for contract lawyers. Correct?

19 A. Yes, that's correct.

20 Q. And if I read your declaration correctly, down at the
21 bottom, Paragraph 115, the amount that Gibson Dunn actually
22 paid to the contract attorney firm is \$108,509.43.

23 A. That is what Paragraph 115 says, yes.

24 Q. Okay. And it's your declaration that's correct, isn't it?

25 A. Yes, it is.

1 Q. Okay. And if you look at the next sentence, the amount of
2 overhead incurred related to the contractors was \$175,317.85.

3 Did I read that right?

4 A. Yes, you did.

5 Q. And yesterday, you did not know how that overhead was
6 calculated. Correct?

7 A. I didn't know yesterday, but now I do.

8 Q. Okay. And was there some accounting person who calculated
9 some overhead charge for these people?

10 A. Yes.

11 Q. Okay. And, but that's in addition to the overhead and the
12 actual fee charged, Gibson Dunn has embedded profit margin on
13 those contract lawyers. Correct?

14 A. Sure. It's just like any associate.

15 Q. And the total amount of that profit is approximately
16 \$250,000?

17 A. Well, whatever 554 minus 108 plus 175 is. Just as we pay
18 attorneys a salary and there's an overhead allocation as to
19 each attorney, and then there's a profit margin given on --

20 Q. Do you mark up any other expenses or vendor fees and pass
21 that mark-up on to the estate?

22 A. No.

23 Q. For example, if you have another, you use another
24 professional accounting firm, would that bill be marked up in
25 sending it on to the estate?

1 A. No, it would not, except for the fact that we would have
2 to file a separate fee application for an accounting firm. So
3 that would never happen.

4 Q. Do you know if other clients of Gibson Dunn do not pay for
5 a profit margin related to contract lawyers?

6 A. I do not know of anyone who does not simply pay their
7 hourly rate, multiplied by the number that we charge,
8 multiplied by the number of hours that they bill. It happens
9 on multiple cases every month, and hundreds every year.

10 Q. If you take a look at the local guidelines, which are
11 Exhibit 16, they are HRC Exhibit 16 --

12 A. That's the white binder?

13 Q. It is. And it doesn't have page numbers on it,
14 unfortunately. Take a look at, I'm under little three,
15 expenses.

16 A. I must be looking at the wrong thing. I'm looking at the
17 General Order --

18 Q. That's correct.

19 A. -- which is Exhibit 16.

20 Q. Yeah, that's it, but --

21 A. Little three.

22 Q. Towards the back is the rules regarding compensation and
23 expenses.

24 A. Is it in one of the exhibits?

25 Q. No. It should be attached to this exhibit. Right?

1 What's the last -- last page should say "Notes." Can I
2 approach, Your Honor?

3 THE COURT: You may.

4 THE WITNESS: Yeah, it says "Notes." Is it three,
5 granted liens? Sorry.

6 BY MR. HAIL:

7 Q. This is the guidelines.

8 A. Okay.

9 Q. And I'm actually --

10 A. Expenses.

11 Q. Expenses, H.

12 A. There we are, okay.

13 Q. Do you see the local guidelines related to professional
14 services?

15 A. I do.

16 Q. And is it your testimony this does not apply to the
17 contract lawyers?

18 A. My testimony is I don't believe it applies to contract
19 lawyers. I'll leave it to somebody else to decide whether it
20 does. I don't believe it does.

21 Q. And is that the reason that Gibson Dunn put a profit
22 margin instead of charging actual costs?

23 A. The reason that we charge a profit margin is that we treat
24 billing for contract attorneys just like we treat billing for
25 our regularly employed attorneys. There's a profit margin

1 built into every attorney's billing rate, and we don't treat
2 them any differently.

3 Q. Is that profit margin disclosed anywhere in the fee
4 application?

5 A. No, it is not.

6 Q. Okay. If we take a look at --

7 A. And I might add, nor is it for Mr. Fromme or for me or for
8 any other professional.

9 Q. You know, I'm sure the Court can tell you that it will go
10 quicker if you answer the questions.

11 Now, if we take a look at the LCC report, well, not the
12 LCC report, if you continue in your declaration, specifically
13 Pages 120 -- Paragraph 120.

14 A. Yes.

15 Q. You looked at the LCC report. Correct?

16 A. I did.

17 Q. And in connection with reviewing what LCC said, you
18 actually found that some time from you had been billed in
19 error. Correct?

20 A. I did.

21 Q. And you backed that time out. Correct?

22 A. Yes, I did.

23 Q. And this is a list of the -- Paragraphs 121, 123 are the
24 number of hours. Correct?

25 A. Yes. And then there's also some, a small amount of time

1 by Mr. Landers that I also backed out --

2 Q. Okay.

3 A. -- when I found that it was mistaken.

4 Q. But, you know, if I read your brief this morning
5 correctly, you criticized that LCC made an error in its
6 analysis. Correct?

7 A. Yes.

8 Q. And in fact, you've identified one time that LCC has made
9 a mistake. Right?

10 A. That's correct, from looking at it for about five minutes,
11 yes.

12 Q. And that one time related to two-and-a-half hours of
13 Mr. Fromme's time that they double counted. Correct?

14 A. The one that I found, that's correct.

15 Q. Are you aware of any other errors related to the time
16 entries in the LCC report?

17 A. Not yet.

18 Q. Is it identified anywhere in your declaration, any errors
19 in the LCC report related to their recalculation of Gibson
20 Dunn's time?

21 A. No. I didn't put that in there.

22 Q. Okay.

23 A. I don't think it's relevant.

24 Q. If you take a look at the expense categories, please, in
25 your declaration, and that is specifically, I think it begins

1 on Page 24 of --

2 A. Okay.

3 Q. Well, before I leave, before I go to the expenses, let's
4 go back to the contract lawyers. I'm sorry. The contract
5 lawyers were supervised in this case. Correct?

6 A. Yes, they were.

7 Q. And you, in your proffer, you indicated that you were
8 convinced they were adequately supervised. Right?

9 A. Yes, I was.

10 Q. How many hours were spent supervising the contract
11 lawyers?

12 A. I don't know.

13 Q. Do you know, if I wanted to look at your fee application
14 and go back and determine how many hours people spent
15 supervising contract lawyers, could I figure that out?

16 A. Sure, if you go back and look at the time entries by the
17 four lawyers and by, that I said were supervising them, and by
18 Mr. Todd, who's a litigation support analyst who's the head of
19 our document review team, and if you go into their time entries
20 and find the entries that relate to supervising contract
21 attorneys, sure.

22 Q. There's no -- but you didn't do that analysis, did you --

23 A. No, I did not.

24 Q. -- before you executed your declaration?

25 A. No, I did not.

1 Q. And there's no specific matter number for supervising
2 these contract lawyers?

3 A. There's no special matter number, no.

4 Q. Okay. Now, if we go to the LCC audit reports --

5 A. Where are they?

6 Q. Oh, I'm sorry. I'm going to your declaration, on your
7 response to LCC audit reports.

8 A. Oh, okay.

9 Q. Which begins on Page 24.

10 A. Yes.

11 Q. LCC criticized some rather large restaurant bills.
12 Correct?

13 A. They did.

14 Q. And in connection with your response to that, you made a
15 unilateral decision to write off some of the costs of some of
16 those meals. Correct?

17 A. I did. I reduced everything, anything that was over \$100
18 a person, I reduced to \$100.

19 Q. So you looked at every meal that was there, and for any
20 meal that was over \$100 per person per meal, you capped it at
21 that. Correct?

22 A. If I found it, I did that.

23 Q. And the reason that you did that was that there were not
24 many, not very many meals in which they totalled more than \$100
25 a person. Isn't that right?

1 A. I recall about 12 or 13 maybe that were more.

2 Q. And that above that number, that's where you took out, and
3 that in fact only reduced the bill by \$2400. Correct?

4 A. Yeah. That's correct.

5 Q. The \$100 per meal per person standard was set by you.
6 Correct?

7 A. Yes, it was.

8 Q. And it's not found in any Gibson Dunn policy. Correct?

9 A. No, it's not.

10 Q. And in fact could include alcohol consumed at those meals.
11 Right?

12 A. The remaining hundred dollars per person could include
13 traces of alcohol, yes, as I told you yesterday.

14 Q. Well, there was no effort at any of these meals -- alcohol
15 was consumed at some of these meals. Right?

16 A. Yes, it was.

17 Q. And there was no effort to break out the charge of alcohol
18 from the cost of the food. Correct?

19 A. No. No, I didn't do that.

20 Q. And in fact, the local guidelines related to the Southern
21 District of Texas specifically say that the costs of alcoholic
22 beverages is not recoverable, don't they?

23 A. Yes, it does say that.

24 Q. And, but you made no effort to account for that, other
25 than your most recent \$100 per person cap. Correct?

1 A. That's correct. There are a number of meals that, of
2 course, we didn't charge for at all, but --

3 Q. Well, I'm just focusing on what's in your fee application.

4 A. Yes, uh-huh.

5 Q. Now, the hundred-dollar-per-person-per-meal category
6 applied whether it was in New York, San Francisco, Corpus,
7 wherever. Correct?

8 A. Yes, that's correct.

9 Q. And were there a fair number of meals eaten at -- well,
10 did you stay at the Omni Bayfront ever?

11 A. Oh, yes.

12 Q. And --

13 A. Many times.

14 Q. Any meal consumed at the Omni Bayfront, that meal wasn't
15 even -- at a hotel restaurant, you could charge to a room, that
16 wasn't broken out separately, was it?

17 A. For some reason, some of them were, yes. There were a
18 bunch of them in the July time frame that, for whatever reason,
19 were broken out separately at the Omni. Breakfasts are not.
20 Dinners are. I don't know why.

21 Q. July of this year?

22 A. Uh-huh.

23 Q. And why were you in Corpus during July of this year?

24 A. Because we had about eight days of hearings about the stay
25 and 507(b) and --

1 Q. The stay and the confirmation. And those meals, that
2 would have been at Republic of Texas. Right? Some of them?

3 A. Yeah, they were.

4 Q. And isn't it pretty hard, even when you have the fanciest
5 thing on the menu at the Republic of Texas, to hit \$100 per
6 person?

7 A. You have not eaten at the Republic of Texas, my friend.
8 No, it's not.

9 Q. That's not true. I ate there last night.

10 A. Okay.

11 Q. But isn't that the case? Isn't it pretty hard?

12 A. Remember what your check was? No, actually it's not that
13 hard. It's not that hard. It's not a cheap restaurant.

14 Q. And did you think that was a wise expenditure of the
15 estate's funds for you to eat at the Republic of Texas?

16 A. I did.

17 Q. And are there other places around town that you could have
18 eaten that would have been less expensive?

19 A. Oh, don't get me started. Yes, of course. And in fact, I
20 don't think we ever ate at the Republic of Texas during April,
21 because we were too busy. But that's where people like to go,
22 Mr. Hail.

23 Q. Where did you eat last night?

24 A. At Mr. Jordan's yacht club.

25 Q. And in fact, you've already submitted a fee application

1 for that meal, haven't you?

2 A. Last night?

3 Q. Yes.

4 A. No.

5 Q. Are you familiar with the supplemental fee application
6 you've put in on this case?

7 A. Yes.

8 Q. And do you know what's in that supplemental fee
9 application?

10 A. Yes. It contains the time for August of 2009 -- 2008.

11 Q. Well, doesn't it also include an estimated cost for
12 defending your own fee app., based on objections?

13 A. It does.

14 Q. And doesn't it include travel to Corpus Christi?

15 A. I think it includes the cost of one trip, yes.

16 Q. And doesn't it also include the cost of meals incurred,
17 consumed in Corpus Christi?

18 A. There's probably, there's probably some estimate for it,
19 but --

20 Q. Why don't you take a look --

21 A. Let me just tell you, I didn't pay for dinner last night,
22 so you can stop worrying about that one.

23 Q. Why don't we take a look at Exhibit 21 and 23 of, I think
24 they're Gibson Dunn Exhibits, 21 and 23, and specifically that
25 is the supplemental fee app. filed in September.

1 THE COURT: Exhibit 21 and 23?

2 MR. HAIL: Correct, Your Honor.

3 THE WITNESS: Yes.

4 MR. HAIL: Now I'm missing a binder. I need to come
5 get one of the binders. Can I approach, Your Honor?

6 THE WITNESS: You can have it now because --

7 THE COURT: All right.

8 THE WITNESS: -- now I have a complete one.

9 THE COURT: Is this an extra one up here?

10 MR. HAIL: I thought that was Your Honor's copy.

11 THE COURT: I've got this one right here.

12 MR. HAIL: Oh --

13 UNIDENTIFIED SPEAKER: Those are the later numbers,
14 Your Honor.

15 THE COURT: Well, why don't you take that one.

16 MR. HAIL: There's a bunch of invoices and time
17 entries.

18 THE COURT: Okay. So that's not it. Okay.

19 THE WITNESS: You can have that one.

20 MR. HAIL: Yeah.

21 THE COURT: 23, and which one?

22 MR. HAIL: 21 and 23.

23 THE COURT: Okay. So in there, is there something
24 where they're estimating how much they're going to eat last
25 night?

1 MR. HAIL: Absolutely, Your Honor.

2 THE COURT: And where is that?

3 MR. HAIL: Exhibit 23, please. Well, that's not --
4 my infallible notes are wrong. Just a second, Your Honor. How
5 about Exhibit 27 --

6 THE COURT: Expenses of 5740?

7 MR. HAIL: I'm wrong, Your Honor. It's Exhibit 27.

8 THE COURT: Okay, 27. Okay. So here is the coach
9 fare and hotel, meals of 2500 (sic), and cab fare of --

10 THE WITNESS: That's only 250, Your Honor.

11 THE COURT: 250, not 2500.

12 THE WITNESS: That would be hard to get to at the
13 Republic of Texas.

14 BY MR. HAIL:

15 Q. Do you recall when this was filed?

16 A. Oh, no, I don't. Maybe early September.

17 Q. Well, if you take a look at it, the docket, it's Docket
18 Number 3724-7.

19 A. Yes.

20 Q. Indicates it was filed on September 29th, 2008. Did I
21 read that right?

22 A. Sounds about right.

23 Q. And that fee application was anticipating an objection to
24 Gibson Dunn's fees. Correct?

25 A. Pretty fairly, I'd say. Yes, it was.

1 Q. And in fact, you've built in \$250 for meals in Corpus.
2 Right?

3 A. We estimated it in case we incurred those charges. As it
4 turned out, we didn't.

5 Q. Now, there was no effort made to this hundred dollars per
6 meal per person, whether it was in San Francisco or New York or
7 Corpus or wherever it was. Correct?

8 A. That's correct.

9 Q. And are you familiar with, for example, what the Southern
10 District of New York talks about for reasonable meals for
11 professionals?

12 A. Southern District of New York?

13 Q. Yes.

14 A. I can't recall off the top of my head.

15 Q. Would you be surprised to learn that the Southern District
16 of New York suggests a limit of \$20 for a meal for a
17 professional?

18 A. Yes.

19 Q. Why don't you take a look at Exhibit 15.

20 A. I believe you, Mr. Hail.

21 Q. Okay.

22 THE COURT: It's in there somewhere, that's in New
23 York?

24 MR. HAIL: It is, Your Honor.

25 THE COURT: Okay. I mean, I've been to New York.

1 Where would you find a meal for 20 bucks? I mean --

2 THE WITNESS: Those street carts aren't half bad,
3 Your Honor.

4 THE COURT: I think the Stage Deli doesn't even
5 charge you 20 bucks for a sandwich, does it?

6 MR. HAIL: It is, it's specifically related to
7 over-time expenses. And it is Page 11 of Exhibit 15.

8 THE COURT: Page 11.

9 THE WITNESS: So like secretarial over time?

10 MR. HAIL: I think it's for all professionals
11 actually.

12 THE COURT: All professional meals, \$20.

13 MR. HAIL: I think that's a standard.

14 THE COURT: Okay. Well, let it go out that the
15 Southern District of Texas actually allows you more than \$20
16 for a meal. There's one place where we're not as tough as,
17 we're looser than New York.

18 THE WITNESS: And we appreciate it, Your Honor.

19 THE COURT: "In any event, the expense for an
20 individual's meal may not exceed \$20."

21 THE WITNESS: But is that for over time, for
22 secretarial over time or something like that?

23 MR. HAIL: It's in the section that says over-time
24 expenses.

25 BY MR. HAIL:

1 Q. So my last question is, there's a fair number of taxi
2 charges incurred in this case. Right?

3 THE COURT: Well, you are not representing that in
4 the Enron case that the lawyers were limited to \$20 a meal in
5 New York.

6 MR. HAIL: I would venture probably not, Your Honor.

7 THE COURT: Okay.

8 MR. FROMME: Your Honor, just to be clear, Paragraph
9 9 on Page 11 of Exhibit 15 in HRC's Exhibit Notebook is
10 over-time expenses, and the --

11 THE COURT: Right. They're talking about when you've
12 got them all working late at night, and you decide to feed the
13 secretaries, you can't do more than \$20 a meal.

14 MR. FROMME: You got it right, Your Honor.

15 MR. HAIL: But it also includes paraprofessionals.

16 THE COURT: And that's a problem, because we've seen
17 situations where they send out for, you know, whatever, they
18 send out for sushi and everything else, it comes in and they
19 want to charge, you know, \$100 a person or something, which may
20 well be what it costs, but you can't do that. You've got to
21 order sandwiches. Go ahead.

22 BY MR. HAIL:

23 Q. Now, there's a fair number of transportation charges
24 incurred in this case. Correct?

25 A. Yes, there were.

1 Q. And that is for cars for people who work late?

2 A. There may be a few charges for that. Most of them are for
3 taxis to and from the airport.

4 Q. And was there any effort to segregate for people who take
5 a cab home at night or a car home late at night?

6 A. Well, they're identified as such, sure.

7 Q. And are those expenses compensable under the Southern
8 District local guidelines?

9 A. I don't know.

10 Q. If you take a look at the Southern District guidelines,
11 specifically --

12 MR. FROMME: I'm sorry, Your Honor, are we talking
13 about New York or Texas now?

14 MR. HAIL: Thank you. Southern District of Texas.

15 THE COURT: And so we're on Number 19?

16 MR. HAIL: We are on MRC Exhibit 16.

17 THE COURT: Wait a minute. I read that 16 upside
18 down. Page what?

19 MR. HAIL: Well, we don't have page numbers
20 unfortunately, Your Honor. It's back in the --

21 THE COURT: Okay. Procedures --

22 MR. HAIL: It's in the expenses category. I have it
23 as Exhibit H.

24 THE COURT: Somewhere under expenses? You don't
25 have --

1 THE WITNESS: I'm sorry, I don't --

2 MR. HAIL: It's back where we were before when we
3 were on professionals --

4 THE COURT: Expenses for reimbursement. Okay.

5 THE WITNESS: Now, which exhibit?

6 BY MR. HAIL:

7 Q. It is Exhibit 16.

8 A. Okay.

9 Q. In the white notebook.

10 A. I have the order application for --

11 Q. No, in the white notebook.

12 A. White book, okay. Okay. Expenses, back of it --

13 THE COURT: Okay. Somewhere in here, is there
14 something that deals with --

15 MR. HAIL: Sub D.

16 THE COURT: -- when people are working late, whether
17 you can pay their cab fare home?

18 MR. HAIL: Yes, Your Honor.

19 THE COURT: And where is that?

20 MR. HAIL: Exhibit -- Sub D, expenses.

21 THE COURT: D as in David?

22 MR. HAIL: Dog. It's Exhibit H --

23 THE COURT: Office overhead?

24 MR. HAIL: Yes, sir.

25 BY MR. HAIL:

1 Q. Do you see the last sentence? "Office overhead includes
2 cost of meals or transportation provided to professionals and
3 staff who work late or on weekends."

4 A. I'm still not there because of the lack of page numbers.

5 THE COURT: Okay. It says that.

6 THE WITNESS: But I believe you.

7 BY MR. HAIL:

8 Q. Were those expenses charged to the estate, Ms. Coleman?
9 Well, let me phrase the question differently.

10 A. Well, first I've got to find it.

11 Q. Okay. It's in Roman III, Subcategory D.

12 A. D, yes, I have that. I believe that there were four or
13 five instances where we had people working very late, and it
14 was not safe for them to take public transportation home, and
15 they took a car home, and that is in our fee application.

16 THE COURT: You did take transportation home?

17 THE WITNESS: They couldn't take public
18 transportation because it was too late and it stopped running,
19 so they took a car home.

20 THE COURT: And you paid for it or --

21 THE WITNESS: We paid for it, and we charged the
22 estate for the actual cost of the car, in maybe four or five
23 instances.

24 THE COURT: Okay.

25 BY MR. HAIL:

1 Q. If we went back and looked, could we identify those cars?

2 A. I think we could, because it's in the grounds in the LCC
3 report, local transportation. It identifies where the car
4 went, so you could do it that way.

5 Q. Okay. And then I guess the last question I have is
6 related to the supplemental fee application, you've also
7 included a fee application for the attorney's fees associated
8 with defending your own fees. Correct?

9 A. That's correct. We want to reserve our rights.

10 Q. Well, you didn't reserve the rights. You actually
11 submitted a fee application for it. Correct?

12 A. An estimated fee application, yes.

13 Q. And that is to justify your own fees, and that benefits
14 Gibson Dunn, doesn't it?

15 A. Yes, it would.

16 Q. Is that benefitting the estate in any way?

17 A. No, it would not benefit the estate. It would pay Gibson
18 Dunn's fees for defending, if the Court decides that those fees
19 are compensable.

20 MR. HAIL: I have no more questions, Your Honor.

21 THE COURT: Okay. Any other questions for her? This
22 is your chance to question her.

23 MR. FROMME: Your Honor, I just have a couple of
24 questions of redirect.

25 THE COURT: Go ahead.

1 MR. HAIL: I've got a whole mess of stuff up here,
2 but --

3 MR. FROMME: Do you want to take it away? I'll give
4 you a minute.

5 MR. HAIL: Sure.

6 REDIRECT EXAMINATION

7 BY MR. FROMME:

8 Q. Ms. Coleman, you were asked a lot of questions about time
9 worked in April during the confirmation hearing.

10 A. Yes.

11 Q. Why was it necessary for you, Mr. Doran, myself and others
12 to work so many hours during that time period?

13 A. Well, we sat this case very, very leanly. The Court will
14 recall that you've seen Mr. Fromme and you've seen me a lot,
15 and you saw Mr. Doran during the confirmation hearing, but the
16 three of us were really the core team. Everybody else in the
17 case had lots and lots of lawyers. For example, the Fulbright
18 firm had seven partners and a whole bunch of associates and
19 staff people back in the hotel working. MRC's Counsel had
20 three or four lawyers. Everybody else with the case had a lot
21 more lawyers than we did. And we made the choice that we
22 weren't going to do that. We were going to have fewer lawyers
23 staffing the case, and that meant that we all had to work a
24 whole lot harder than other people in the case.

25 Q. Well, who else was present in Corpus Christi that did not

1 appear at court?

2 A. We actually had two other people, three, but two at any
3 given time. Mr. York came. I believe he was here for both of
4 the trial weeks. Mr. Knight was here for one of them, and
5 Mr. Waters was here for one of them. And then we also had one
6 paralegal, and we had an IT guy. But that was significantly a
7 skeleton staff compared to what the other firms had. Other
8 firms had five and six secretaries, paralegals, junior
9 associates, document entry people, lots and lots of people that
10 are probably 14 or 15 people that the Fulbright firm, for
11 example, had working here in Corpus.

12 Q. Was the IT guy ever present in court?

13 A. No, he was not.

14 Q. Are you referring to Mr. Sanden?

15 A. Yes, I am.

16 Q. And was he ever in court?

17 A. My recollection is that he was not. He came -- no, I
18 believe he was not. I think he was here --

19 Q. Who operated the --

20 A. Oh, that's right. That's right. Thank you for reminding
21 me. Yes. Mr. Sandin did come to court to operate the ELMO or
22 the overhead screen.

23 Q. Now, Mr. Hail asked you some questions about discounts
24 given to other Gibson Dunn clients?

25 A. Yes.

1 Q. Were there any discounts given to ScoPac in this case?

2 A. Yes, there were. My rate was discounted. My personal
3 billing rate was discounted. The client asked me to do that,
4 and I did, and it was discounted for the entirety of the case.
5 And then of course there was also the \$1.2 million of
6 reductions that were made over the course of the case.

7 Q. You were asked some questions about Legal Cost Control's
8 description of inadequate time descriptions.

9 A. Yes.

10 Q. Have you reviewed -- you're aware that Legal Cost Control
11 has detailed reports on their website?

12 A. Yes, I am.

13 Q. And did you review that report on inadequate time records?

14 A. Yes, I did. I printed out all 111 pages of it.

15 Q. And when you read through that, what conclusion did you
16 draw?

17 A. Well, the first problem was, the first conclusion I drew
18 was that the way that LCC reports these things isn't very
19 helpful, because they'll take the day's worth of time entries
20 that are separated by semicolon's, and then they'll break it
21 out by small task and semicolons and rendering the entire thing
22 meaningless, because you'll have a time description that says
23 "analysis of same," which makes perfect sense in the context of
24 a day-long time entry but makes no sense whatsoever just in the
25 context of itself. And .2 hours for e-mails regarding, e-mails

1 regarding analysis may be perfectly understandable in, when you
2 read the time sheet, but it doesn't make any sense broken out
3 by itself. And that is a very large number of the entries
4 identified by LCC as, quote, inadequate, closed quote, or like
5 that. It's just the way their computer model works, I guess.

6 Q. Did you draw any other conclusions when you reviewed
7 those, that report?

8 A. Well, that particular, that particular report, yes. It
9 made it look -- the way they do it makes it look as though a
10 lot more time is inadequate than it is. And the other thing
11 that concerns me about it is that LCC enters, they take all the
12 time entries and they reenter them into their database, which,
13 of course, means that they could have a lot of errors.

14 Q. How was it that valuation experts were decided -- how was
15 it decided that valuation experts would be hired in the case?

16 A. Well, the client ScoPac and its board were very interested
17 in obtaining a valuation, because, of course, valuation is what
18 starts the entire plan confirmation process. So the board
19 directed Mr. O'Brien to take charge of a search process and to
20 retain and to start the process of retaining, of retaining
21 experts at the board's direction.

22 So an interview process was conducted. Three or four
23 valuation firms were contacted and made pitches to ScoPac
24 management. I believe that you attended one of them. I
25 attended one of them. And ultimately, in consultation with the

1 board, KPMG was decided on as the timberlands valuation expert
2 and retained.

3 Q. Now, why was it important -- you may have said this and I
4 missed it -- why was it important to have a valuation expert in
5 this case?

6 A. Well, you can't have a plan of reorganization without a
7 valuation. And it was the goal of ScoPac to reorganize under
8 Chapter 11. That was not a goal that it ultimately achieved,
9 but ScoPac wanted to reorganize, and you can't have a plan
10 without a valuation. So it was very important to ScoPac, from
11 early on in the case, from probably February of 2007 was when I
12 recall the board meeting where it was discussed that we had to
13 get a valuation process underway immediately, because the case
14 had been filed in the previous month, and it was time to get
15 going so that we would be able to get a valuation and propose a
16 plan.

17 Q. Let's jump ahead to the confirmation trial and the date
18 when PALCO and Maxxam announced their deal with Marathon and
19 MRC. Do you remember that?

20 A. Yes, I do, very well.

21 Q. How was the board of ScoPac informed about that deal?

22 A. Well, they were actually informed well in advance of that
23 deal, because of course, we knew that negotiations were going
24 on. So I believe we had one board meeting on the 27th of April
25 to apprise the board of the state of those negotiations. We

1 had two board meetings on the 28th of April, one in the
2 morning, at about 7:00 o'clock in the morning before we had to
3 go to court, and one I think 10:30 in the evening, after we
4 came back from court, just to tell the board what was going on
5 and to advise the board of what the shape of the negotiations
6 was.

7 We also, I think, had a meeting on the 29th. I'm not sure
8 if there was a meeting on the 30th. I was in constant
9 communication with the board about the negotiations about what
10 it would mean for ScoPac if Maxxam and PALCO settled with
11 Marathon and MRC. Obviously, it would have an impact on the
12 exit financing that Maxxam was going to provide before it made
13 that settlement.

14 So I was talking to the board all the time. And at the
15 time, we also had Mr. Bacik, and they were still employed by
16 ScoPac. So Mr. Bacik was there at the meeting. He was not
17 usually at board meetings, but he was there at that one.
18 Mr. Barrett was there. Mr. O'Brien, of course, was there. So
19 we talked to the board for probably seven or eight hours total
20 in the week before or in the few days before the deal was
21 announced.

22 I heard about the finalization of the deal. I'm trying to
23 remember, I heard that at about 2:00 o'clock in the morning on
24 the 1st, the night going over from April 30th. I got a call
25 that they were close, but there were a couple of items still

1 being negotiated with Mr. Dean and Mr. Herwitz, and that so far
2 as they knew, the deal had not been concluded.

3 I then got a call at about 7:20 the next morning saying
4 the deal had in fact been concluded and would be announced in
5 court starting at 9:00 o'clock, or whatever time we were
6 starting that morning. I don't remember when it was. I think
7 it was 9:00.

8 I immediately contacted the board members, told them this
9 had happened, and informed them what the consequences would be.
10 They, we talked about it for a while, had a short meeting of
11 the board, at which Mr. Friedman, who was the general counsel
12 of Maxxam, recused himself. So it was just me and Mr. Weiss
13 and Mr. Webb.

14 And Mr. Weiss and Mr. Webb concluded that ScoPac should
15 not in fact agree with the settlement that had been struck
16 between Maxxam and PALCO and MRC, and that ScoPac should,
17 instead of pursuing its own plan, because obviously it couldn't
18 do that now that it had no exit financing, should seek the
19 highest value it could for its assets. And they thought that
20 an auction would probably be the best way to go.

21 There was a discussion about trying to make a deal with
22 the noteholders to get the noteholders to amend their plans so
23 that the auction proposed in their plan would be acceptable to
24 ScoPac, and we did enter into those negotiations, but they
25 didn't ultimately result in any changes to the noteholders'

1 plan. That may have been more than you were asking.

2 MR. HAIL: Your Honor, I move to strike 99 percent of
3 that last answer, other than how did you hear, how did you
4 learn of the settlement.

5 THE WITNESS: I don't think that's what he asked.

6 MR. FROMME: That wasn't the question, Your Honor.

7 MR. HAIL: It's nonresponsive.

8 THE COURT: All right.

9 MR. HAIL: Also, I didn't talk about it on direct.

10 THE COURT: I'm not going to strike it.

11 MR. HAIL: Well, I didn't talk about it on direct,
12 too.

13 THE COURT: So if you want to ask her another
14 question about it, fine. Go ahead.

15 MR. HAIL: I also didn't talk about it on direct.
16 That's another --

17 BY MR. FROMME:

18 Q. Ms. Coleman, after that point, how was it determined how
19 ScoPac would act going forward?

20 A. Well, we talked to the board --

21 MR. HAIL: Your Honor, I object to this, too. I
22 didn't go into the board conversations on May the 1st in my
23 cross. It's in her proffer.

24 MR. FROMME: Your Honor, he asked about things that
25 happened since the confirmation hearing and after that. I'm

1 asking about that right now.

2 THE COURT: Okay. Well, I'll give you a little bit
3 of time. Go ahead.

4 THE WITNESS: We had frequent board meetings, and I
5 apprised the board of what was going on, and the board would
6 decide what was the best for the value of ScoPac's estate,
7 which was comprised mostly of the noteholder claims, obviously,
8 from and after that point. And then the board would instruct,
9 instruct management what to do.

10 BY MR. FROMME:

11 Q. And did that happen at each instance since May 1st, after
12 May 1st, going forward?

13 A. Yes, it did, as well as before May 1st. The board
14 authorized everything we did.

15 Q. I'm sorry. There was one last series of questions that
16 were about charges for expenses to the estate.

17 A. Yes.

18 Q. Were there expenses incurred by Gibson Dunn professionals
19 during the pendency of the case that were not charged to the
20 ScoPac estate?

21 A. Yes, there were many. I paid for over \$10,000 of dinners
22 myself.

23 Q. Were there anything else besides that?

24 A. I did not charge for tips. I didn't charge for a lot
25 of --

1 MR. HAIL: Your Honor, I object. I didn't ask this
2 question either. I mean, I know the way redirect works, you're
3 supposed to ask about stuff on cross. I didn't ask about that,
4 so I object to this line of questioning.

5 THE COURT: Well, I think you asked about expenses
6 and all of that. And some of them you were, I mean, you
7 intimated that 20 percent (sic) was somehow the limit on bills
8 in food in New York, which actually, as it turns out, by
9 reading the complex rules, apparently we are actually stricter
10 than New York. They apparently allow you \$20 for your staff
11 working over time. We don't allow anything for the staff over
12 time. So I didn't remember that, but --

13 MR. HAIL: Counsel had --

14 THE WITNESS: You have to apologize for --

15 THE COURT: -- and you pointed that out. But I think
16 that he now has the opportunity to point out that there were
17 times when they didn't, didn't bill for things.

18 MR. HAIL: Okay.

19 THE WITNESS: And there were many expenses that I
20 didn't bill. For example, tips. A lot of taxi fares I didn't
21 bill for. Myself, I personally paid for a lot of meals that I
22 didn't bill the estate for. And that also goes for time as
23 well. I didn't bill a lot of my own time that I spent on the
24 case.

25 BY MR. FROMME:

1 Q. Ms. Coleman, how are partners compensated at Gibson Dunn?

2 A. Oh, the temptation is to be flip, but every partner at
3 Gibson Dunn has a share, has a number of shares in the
4 partnership, and we are compensated by -- and the profits of
5 the firm are divided up among the partners in accordance with
6 the number of shares.

7 Q. Is your compensation based on the number of hours billed?

8 A. No, it is not.

9 MR. HAIL: Your Honor, I object to this line of
10 questioning and those questions, because I know I didn't ask on
11 direct --

12 THE COURT: I know, I don't know why, we didn't go
13 into this.

14 MR. FROMME: He was asking about the hours that
15 Ms. Coleman billed in the case and whether that was the highest
16 in the firm, and he's going to sit in argument and argue about
17 that.

18 THE COURT: Okay. But you're now talking about,
19 though, compensation, not her billing rate, but her
20 compensation rate.

21 MR. FROMME: He was asking about the number of hours
22 she billed in the case, and compared to other --

23 THE COURT: Well, you can ask her about the number of
24 hours, but I don't know that we need to get into how she's
25 compensated in the firm or how partners are compensated.

1 MR. FROMME: Okay. Then that's great, Your Honor.

2 MR. HAIL: If he asked the question -- Your Honor,
3 I'm free, if he wants to ask the question.

4 THE COURT: Okay. You won that one. So now -- go
5 ahead.

6 MR. HAIL: Well, I was going to say, I could
7 redirect, I mean recross.

8 MR. FROMME: Your Honor, I have no further questions.

9 THE COURT: Okay. Now any recross, now that he sort
10 of exceeded a little bit?

11 MR. HAIL: I'll ask very quickly, Your Honor.

12 THE COURT: All right.

13 RECCROSS-EXAMINATION

14 BY MR. HAIL:

15 Q. Does the estate bear the cost of Fulbright & Jaworski?

16 A. No, it does not, unless they make a substantial
17 contribution.

18 Q. Who pays Fulbright & Jaworski's fees in connection with
19 this case?

20 A. I do not know, but I am going to assume that the
21 noteholders in some way pay it.

22 Q. Okay.

23 THE COURT: Okay. There was a time when the estate
24 was paying Fulbright & Jaworski.

25 THE WITNESS: Yes, there was.

1 THE COURT: Now, it ultimately got sliced off of what
2 the noteholders got. But there was money being paid -- I don't
3 want the record to reflect that there wasn't any money out of
4 the estate --

5 MR. HAIL: You're right.

6 THE COURT: -- going to Fulbright & Jaworski, because
7 there was.

8 MR. HAIL: I'll ask a better cleanup question.

9 BY MR. HAIL:

10 Q. Ultimately who bears the economic costs of Fulbright &
11 Jaworski in this case?

12 A. Well, other -- I --

13 Q. The noteholders?

14 THE COURT: The plan did not provide for Fulbright &
15 Jaworski to be paid a specific amount of their fee. The plan
16 provided for X dollars to the noteholders. Now, if they wanted
17 to pay all that to Fulbright & Jaworski, they were welcome to.

18 BY MR. HAIL:

19 Q. They're not -- they didn't file a fee application in this
20 case that was granted and paid for as part of any expense.

21 Correct?

22 A. No, they did not.

23 MR. HAIL: Okay. I have no more questions, Your
24 Honor.

25 THE COURT: Okay. When, now, you talked some about

1 the change that you all did when, and why you decided to oppose
2 the settlement with Maxxam and Marathon. However, there was a
3 time when the Debtor was proposing their own plan.

4 THE WITNESS: That's correct.

5 THE COURT: And the Debtor decided not to, to
6 withdraw their plan, and basically the Debtor decided, your
7 Debtor decided to back the bondholders. When was that?

8 THE WITNESS: Yes. That was on May 1st, Your Honor.

9 THE COURT: And how much time was spent after
10 May 1st?

11 THE WITNESS: There was --

12 THE COURT: So how much of this, not counting today,
13 but how much of the fee application that you're seeking, the
14 6.8 million, is for time spent following that time?

15 THE WITNESS: I believe that it's approximately
16 a million-and-a-half dollars, Your Honor. I'd have to go look,
17 but it's about, a little less than 500 per month.

18 THE COURT: Okay. Now, once you decided that your,
19 that there was not a plan that the Debtor could do, and that
20 your, presumably your ethical responsibility or your fiduciary
21 duties of the Debtor were to support the bondholders, how do
22 you justify that you continued to work for the estate at that
23 point?

24 THE WITNESS: Well --

25 THE COURT: Since the bondholders were certainly well

1 represented.

2 THE WITNESS: They were, Your Honor, but the
3 bondholders requested, made several requests of ScoPac's board
4 to take action. We did not take any action that was not
5 requested by the bondholders. And the bond --

6 THE COURT: Okay. Did you have any agreement with
7 them for them to pay for it?

8 THE WITNESS: No, we did not, Your Honor.

9 THE COURT: Did you seek some sort of agreement, if
10 they wanted your help, that they would pay for it?

11 THE WITNESS: No, we did not, Your Honor, because my
12 view was that the bondholders essentially were the estate. And
13 the board's view was we can support the bondholders, but we
14 want to do so as, at as little cost as possible. ScoPac still
15 had its own independent fiduciary duties to maximize the value
16 of its assets, because the bondholders weren't all the estate,
17 so we didn't just have to do whatever they said, but we did
18 have to take their requests into account, because we no longer
19 had an equity holder that had any interest in us.

20 THE COURT: Okay. You can step down.

21 THE WITNESS: Thank you.

22 THE COURT: I guess I should ask, though, do you have
23 a, an estimate of the amount of money that was spent on meals
24 for people working over time and the amount of money on
25 transportation for people working over time? Can you give me a

1 ball park estimate?

2 THE WITNESS: My guess -- I don't think there are
3 anything for meals, and my guess is that the car services add
4 up to about \$300.

5 THE COURT: Okay. You can step down.

6 THE WITNESS: Thank you.

7 THE COURT: All right. Any other witnesses?

8 MR. FROMME: No, Your Honor. We have no other
9 witnesses.

10 THE COURT: All right. Were you going to call any
11 witnesses?

12 MR. HAIL: No, Your Honor.

13 THE COURT: All right. Are we ready to argue?

14 MR. FROMME: We are, Your Honor. Can we just take a
15 five-minute break?

16 THE COURT: Okay. Now, are we about to have -- there
17 are serious arguments about the amount of time, benefit to the
18 estate, whether that changed, and some of the duties and
19 responsibilities, what, those kind of things. But there's also
20 the possibility that somebody's going to argue that the dicta
21 of ProSnacks means that in the Fifth Circuit you must, in order
22 to be paid, you must meet the standard that everywhere else you
23 have to meet for benefit of the estate, if you're going to not,
24 if you have never, have not been appointed, in other words, if
25 you're a creditor's lawyer trying to get money from the estate.

1 Are you going to make that argument?

2 MR. FROMME: I believe that's the argument that's
3 going to be made.

4 THE COURT: You are going to make that argument?

5 MR. FROMME: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. HOLZER: Your Honor, before you leave, we have
8 the agreed order on the Diamond McCarthy application.

9 THE COURT: Let me have the order.

10 MR. JOHNSON: Your Honor, if you could sign that. I
11 don't think my partners would let me go home until I get it
12 signed, and they're not going to pay for a hotel.

13 THE COURT: Okay. Well, signing it doesn't get it
14 entered, so --

15 MR. JOHNSON: That's all right. I can tell my --

16 THE COURT: We'll take a five-minute break where
17 we'll see if we can get it entered.

18 MR. JOHNSON: Thank you, Your Honor.

19 THE COURT: Unless you want me to sign a second copy
20 for you and you can leave.

21 MR. JOHNSON: That's okay, Your Honor.

22 THE COURT: During the break, if you could get
23 somebody to enter that, I'd appreciate it.

24 (Recess from 4:24 p.m. to 4:31 p.m.)

25 THE COURT: All right.

1 MR. FROMME: You know, Your Honor, I just wanted to
2 identify some numbers for you that --

3 THE COURT: Okay.

4 MR. FROMME: -- I'm sorry that I didn't have for you.
5 The total fees and expenses in the case are \$14,776,251. That
6 includes a write-off of \$1,102,333.95.

7 THE COURT: Okay.

8 MR. FROMME: Okay.

9 THE COURT: So if you had filed for all your fees, it
10 would have been a million and 100 more.

11 MR. FROMME: Yes.

12 THE COURT: So it would have been 15 nine
13 approximately.

14 MR. FROMME: Yes. And then what we did was we
15 reviewed the LCC audit reports and went back to our time
16 statements and we reduced our requests, and it's outlined in
17 Ms. Coleman's declaration, by \$98,088.43.

18 Now, PALCO, I mean ScoPac, excuse me, has been paid
19 7 million --

20 THE COURT: Okay. So if I take the 14,776,000 and
21 subtract 98,000 from it, then I get the actual amount of your
22 request?

23 MR. FROMME: Correct. That's the actual amount of
24 our request.

25 THE COURT: So that figure then is what?

1 MR. FROMME: I didn't add that one up, Your Honor.
2 I'm sorry.

3 THE COURT: Okay.

4 MR. FROMME: But let me tell you what we've been
5 paid.

6 THE COURT: Okay.

7 MR. FROMME: What we have been paid is \$7,415,431.51.
8 And that's attached to our application.

9 THE COURT: Okay.

10 MR. FROMME: So the total amount that still needs to
11 be paid, that we're requesting to be paid, and this includes
12 that \$98,000 I gave you as a reduction, is --

13 THE COURT: Includes the reduction? So this is the
14 actual correct figure?

15 MR. FROMME: Yes.

16 THE COURT: If I were to find 100 percent in your
17 favor?

18 MR. FROMME: Yes.

19 THE COURT: Is?

20 MR. FROMME: \$7,262,731.10. 7,262,731.10.

21 THE COURT: Okay.

22 MR. FROMME: I just wanted to give you those numbers,
23 Your Honor.

24 THE COURT: Okay. Thank you.

25 MR. FROMME: Ms. Coleman will take the closing

1 argument.

2 THE COURT: All right.

3 MS. COLEMAN: This feels much more comfortable. Your
4 Honor, you've heard me ask the same question many times. Why
5 are we here? I ask that at the beginning of almost every
6 hearing. Today the answer is very short. The plot is right
7 out of Shakespeare. It's revenge. MRC is getting back at
8 Gibson because ScoPac's board of managers, as I just testified
9 about, exercised its fiduciary duty, and we wouldn't go along
10 with the settlement that MRC made with Maxxam and PALCO.

11 Your Honor, that context is important, you can easily
12 identify it, but the context is important because it makes the
13 objection really very noncredible. HRC is complaining about
14 Gibson lawyers staying in hotels that PALCO attorneys from
15 Baker Botts stayed at, at the very same time, and they didn't
16 get objected to.

17 It complains about Gibson lawyers working more than
18 12 hours a day, something that Mr. Holzer and Mr. Jordan and
19 Mr. McDowell and Mr. Lamb, many other people did all the time
20 in this case as well. It was a very, very contentious, hard
21 working case.

22 THE COURT: Well, did you all make the argument that
23 paying cash is not the indubitable equivalent?

24 MS. COLEMAN: Yes, Your Honor, we did.

25 THE COURT: You made that argument, too? Okay.

1 MS. COLEMAN: Yeah, we did. We did, I'm sorry to
2 say. But there's no objection to their fees.

3 THE COURT: Don't be sorry. I mean, if you think
4 that's the case, then you should make the argument.

5 MS. COLEMAN: Well, I think that the Fifth Circuit, I
6 guess the Fifth Circuit is going to decide for us. But it is
7 certainly a, it's a serious point, too, because it is not an
8 easy call, as Your Honor knows. This is a very, very
9 interesting, from the scholastic standpoint, and very difficult
10 case to grapple with, and that's, I still think about that
11 question all the time. And I'm not sure -- I'm not sure where
12 it's going to go. I think it's a really interesting question.

13 But the point is, Your Honor, there were 36
14 professionals in this case. The only ones that got objected
15 to, Diamond McCarthy has now settled, but the only ones that
16 got objected to are us and Diamond McCarthy. And there are
17 time entries from Baker Botts that look just like our time
18 entries that Mr. Hail was asking me questions about.

19 In fact, HRC is complaining that Gibson went out and
20 got a high valuation that they say is ridiculous, and they say
21 the Court didn't ultimately accept it, which it didn't, and
22 says that Gibson shouldn't be paid for getting that valuation
23 as a result. But they never objected to the fee applications
24 of the professionals who came up with those, the allegedly
25 ridiculous valuations.

1 That's just some examples of why this is just clearly
2 a revenge motivated objection, and it should be disregarded.
3 But here we are. The objection has been made, and we have to
4 respond to it. So let me talk about ProSnacks, since that's
5 where I think we're going.

6 Before I do that, though, Your Honor, I want to
7 supplement my answer on the post-May 1st work. ScoPac was a
8 Debtor-in-Possession until July 30th, when the MRC plan went
9 effective. We didn't know -- we made arguments on May 15th, we
10 didn't know when the Court was going to rule, and we didn't
11 know what the Court was going to rule. We had some ideas, but
12 we didn't know what the Court was going to rule.

13 So ScoPac was in the very difficult position of
14 having, first of all, when PALCO settled, Maxxam directed all
15 of the board members, or all of the executives who were
16 employed by both PALCO and ScoPac, which as I recall was all
17 but one, to resign their positions at ScoPac. That left ScoPac
18 with no CEO, no CFO, and no general counsel. So, and only a
19 two-member board. Just our two independent members were left.

20 So the board, in very quick order, I think they did
21 it the next day, had to elect a third board member. They then
22 had to get a CEO and come up with how we're going to pay him.
23 We had to get a CFO. And none of this did PALCO want us to do.
24 So it was a really very difficult situation. And yet ScoPac
25 was still a Debtor-in-Possession.

1 ScoPac had not, wasn't really backing the
2 bondholders, because we couldn't get the bondholders to make
3 changes to their plan to do what ScoPac wanted in a plan
4 either. The board wanted a full and fair auction. They didn't
5 want the noteholders to simply be able to credit bid. So they
6 wanted the noteholders to agree in some way to limit their
7 credit bid. And we were, we were opposed to the noteholders in
8 that way.

9 So it wasn't really just backing the noteholders.
10 The noteholders would not have agreed to pay our fees for
11 helping them, because they frankly didn't think we were helping
12 them on everything. For example, the 507(b) claim, we opposed
13 it.

14 THE COURT: How much do you think, I mean, of course
15 now I can ask you these questions that I couldn't ask you
16 before. How much did you think Marathon's assets were worth
17 that secured their debt?

18 MS. COLEMAN: Marathon's assets?

19 THE COURT: Yeah.

20 MS. COLEMAN: Marathon's assets. I thought they were
21 worth about \$100 million. I thought Marathon was fairly
22 significantly undersecured.

23 THE COURT: And so did you not have discussions with
24 the bondholders that if they would just simply buy PALCO for
25 \$100 million, they could get out of this?

1 MS. COLEMAN: All the time. Yes, of course. And
2 there was, you know, without divulging any --

3 THE COURT: I mean, it would have been easier for
4 them to come up with a hundred than it was for Marathon to come
5 up with 530.

6 MS. COLEMAN: I agree with that, Your Honor. I agree
7 with that. I -- but yeah, we certainly did have those
8 discussions. I think it was --

9 THE COURT: Well, when we talk about valuating equity
10 through either an auction or a lifting of exclusivity, isn't
11 that what the Supreme Court was talking about, that when you
12 lift exclusivity, that the various, various creditors now have
13 the opportunity to value it by, and those with the biggest debt
14 are in the best position to make a play for the assets?

15 MS. COLEMAN: Yes. I think that's exactly what the
16 Supreme Court was talking about. What -- and the noteholders
17 aren't here to speak for themselves, but I think if they were,
18 what they would say is that they had a faction, the noteholders
19 are a very diverse group, and they had a faction that very
20 strongly believed that they were ScoPac-only creditors, and
21 they shouldn't have to, for lack of a better word, lack of a
22 better phrase, come up with money to pay Marathon. They
23 thought, "That's not our problem. Our problem is only ScoPac."

24 And Your Honor clearly disagreed and wanted a unified
25 solution. And I think that it, they ultimately got there, but

1 it was too little, too late. They ultimately found somebody
2 who wanted the PALCO assets and made a deal with them, but by
3 then --

4 THE COURT: Well, but I don't even think they
5 produced a plan that was feasible, even just to buy their own
6 assets. I mean, I don't -- I mean, we've had that argument
7 before, but they didn't really meaningfully come up with even a
8 plan that would have been independently just do their assets,
9 because it wasn't clear how they were going to get the
10 conveyances, how they were going to get the permits, how they
11 were going to do a whole lot of stuff that they didn't prove
12 up. I mean, so I mean, it's the first confirmable plan, not
13 necessarily --

14 MS. COLEMAN: Right.

15 THE COURT: I mean, I agree that they might have had
16 a right to do what they wanted to do, if they would have done
17 it right.

18 MS. COLEMAN: Yes.

19 THE COURT: Okay. Well, go ahead.

20 MS. COLEMAN: Certainly. Certainly, Your Honor.

21 THE COURT: Okay. Well, let's get on to ProSnacks.

22 MS. COLEMAN: Okay. But I --

23 THE COURT: I don't really want to talk about
24 ProSnacks.

25 MS. COLEMAN: All right. I'll try to make it pain

1 free. I'm sure Mr. Hokanson won't, but I will. But anyway,
2 Your Honor, just to finish the point --

3 THE COURT: I have the greatest respect for the
4 Circuit Judge that wrote the opinion, but I think that somehow
5 they, maybe it's right, but it is dicta, isn't it, at least
6 that portion?

7 MS. COLEMAN: Well, you're certainly going to hear
8 that from me in a minute or so, Judge. Let me just finish my
9 point on the post-May 1st work, because it was, some of it did
10 seem to support the noteholders --

11 THE COURT: Okay. Well, there's no question that
12 they were a Debtor-in-Possession to the end, that they were
13 entitled to counsel. But was it in the best interest of the
14 Debtor to basically assist the bondholders in the pursuance of
15 their plan?

16 MS. COLEMAN: Well, we don't -- in fairness, Judge,
17 we don't really see it that way. We believe we were
18 benefitting the estate because we were keeping the business
19 together. If the Court is familiar with the --

20 THE COURT: Okay. So you agree that it would not be
21 in the best interest of the estate to defend the bondholders.

22 MS. COLEMAN: I agree --

23 THE COURT: But it would have been in the best
24 interest of the estate to keep the estate together and to
25 promote the most value for the assets.

1 MS. COLEMAN: That's exactly what we were doing, Your
2 Honor. And that's why we did the Lehman DIP motion, because we
3 wanted to make sure ScoPac would have enough money so that we
4 could turn a business over to the buyer, MRC.

5 Remember, we didn't know until July 30th, literally,
6 maybe July 29th, that the MRC plan was going to go effective.
7 We had a very hotly contested hearing in Houston the Friday
8 before, where there was a substantial question about whether
9 there was a final order and whether they could go effective
10 before the appeals were done.

11 And Judge Jones, I don't know if the Court has
12 listened to the audio file of the argument in New Orleans, but
13 Judge Jones was very, very insistent that she thinks there's a
14 substantial question about whether a final order can define, an
15 order can define itself as final in that manner. And she had
16 some words about that. I'm not going to try to repeat them,
17 but she thought it was a substantial question.

18 So we didn't know, Your Honor. And what ScoPac was
19 trying to do was keep body and soul together, keep itself
20 financed. One of the noteholders, Lehman, was -- which now
21 seems ironic, of course, since, you know, they made it into
22 bankruptcy right after ScoPac made it out -- was prepared to
23 finance that just in case, you know, what if a stay had
24 granted? What if the plan hadn't gone effective? What if it
25 hadn't consummated? We just didn't know what was going to

1 happen. There was a lot happening, and we were trying to spend
2 as little money as possible, while keeping ScoPac together.

3 THE COURT: Well, if I thought, I mean, you know, we
4 could talk about this all we want, but if I thought that the
5 plan, by its own definition, would not have been effective
6 until the appeals were over, then the plan wouldn't have been
7 confirmable because it wouldn't have been feasible.

8 MS. COLEMAN: Right. No, I understand, Your Honor.

9 THE COURT: So inherently in deciding that, I mean,
10 in a sense, whether they laid behind the letter of what was
11 written and then brought that up later when they should have
12 brought it up before if they were going to bring it up, or
13 whether it was specifically dealt with in the order, I mean, I
14 ruled the way I ruled. Now, you know, I agree with you, that
15 was a significant issue.

16 MS. COLEMAN: So my only point being that we just
17 didn't know what was going to happen until it did happen. And
18 when it did happen, Your Honor, one of my associates spent 13
19 hours on the day that they went effective getting all of their
20 real estate, MRC's real estate documents and all the
21 conveyances done, and then they objected that he spent more
22 than 12 hours in a day. But okay, we'll overlook that.

23 Let's talk about ProSnacks. What Colliers says about
24 ProSnacks is as follows, and I'm going to quote it. "In
25 ProSnacks, the Fifth Circuit interpreted the benefit

1 requirement strictly. The Court stressed that any work
2 performed by attorneys for a debtor must be of 'material
3 benefit' to the estate. Moreover, for services performed
4 before the appointment of a trustee, the Court held that the
5 services must have resulted in an identifiable, tangible and
6 material benefit to the bankruptcy estate in order to be
7 compensable."

8 Then Colliers goes on and says, "But the concept of
9 benefit to the estate is not restricted to an economic
10 interpretation. Other considerations may include whether the
11 services rendered promoted the bankruptcy process or
12 administration of the estate in accordance with the code and
13 the rules."

14 So we submit, Your Honor, first of all, ProSnacks was
15 a completely different case than this on the facts. I don't
16 think it has a lot of meaning here, quite frankly. No
17 Chapter 11 trustee appointed -- in fact, this Court declined to
18 appoint one after being asked to -- nor was this case commenced
19 as an involuntary Chapter 7 by creditors.

20 In ProSnacks, they spent the whole darn case trying
21 to get back to a Chapter 7 liquidation after the debtor
22 converted to an 11 as a matter of right. And they ultimately
23 succeeded.

24 Here, the story is very different. We had a Debtor-
25 in-Possession with a confirmable plan. It's very important to

1 remember, Your Honor, ScoPac had a confirmable plan. We didn't
2 have the same problem PALCO did. We had not sold our soul to
3 Marathon. We were able to confirm a plan until we lost our
4 exit financing, because the equity holder went away. But we
5 had one all the way up until May 1st, when Maxxam settled with
6 Marathon/MRC and withdrew our financing.

7 After that, as I said, we were Debtor, tried to
8 maximize the value of our estate. We were supporting, in some
9 ways, the holders of all the pre-petition claims. In other
10 ways, we opposed them. We opposed the 507(b) claim, for
11 example, and the noteholders asked us to reconsider, and the
12 board directed us to let the noteholders make their case to us.

13 Several times the noteholders asked our experts, even
14 asked our valuation experts if they could retroject the value
15 of the forest back to January of 2007. Our experts disagreed,
16 and we said we can't, you know, ScoPac cannot support the giant
17 507(b) claim that you guys want to make. And they tried it
18 several times, and several times it didn't work.

19 So in that context, what does ProSnacks mean?

20 THE COURT: So you did not totally follow the
21 bondholders. It is true that --

22 MS. COLEMAN: We did not.

23 THE COURT: -- the 507(b), you took a reasonable
24 position.

25 MS. COLEMAN: Well, and we of course submit, Your

1 Honor, that we took a reasonable position on everything. But
2 reasonable minds can disagree.

3 But Your Honor, and the 507(b) is a perfect example.
4 What we said is, look, you want to depose ScoPac's employees.
5 We're their Counsel. We're going to defend them. We're not
6 going to just lie down and say, you know, we don't have a plan
7 any more, so we're dead. We weren't. And we couldn't do that.

8 So we defended them, but we took a neutral position.
9 We said if anybody wanted, in any of that post, that post-
10 confirmation time, if anybody wanted a ScoPac witness, we would
11 provide the witness. We would meet with them. We would help
12 them prepare the witness. We did the same thing with MRC and
13 Marathon as well. We made our witnesses available to meet with
14 them as well.

15 So I think we were as even-handed as we could be,
16 given that we were trying to maximize the value of the estate.
17 And we didn't think, quite honestly, that the Marathon plan did
18 that, because we didn't think that it paid the value of
19 ScoPac's assets in accordance with ScoPac's expert's opinion.

20 So in that context, getting back to ProSnacks, what
21 does it mean? What does it mean on these facts? Is there a
22 material benefit test? Is there a hindsight test? Do you have
23 to have success before you can go back? Do you have to confirm
24 a plan to get compensated?

25 Judge Monroe, with the Spillman case, which is a 2007

1 case out of the Western District of Texas, he said, "Well, you
2 know, it's completely unclear." The Fifth Circuit muddied the
3 waters kind of irretrievably in ProSnacks, and he's kind of
4 waiting for Gadzooks to make its way back up from the
5 Bankruptcy Court, the District Court, to the Circuit, so the
6 Circuit can correct itself.

7 But let's assume, just for the second, that ProSnacks
8 is just as Draconian as HRC is going to argue in a few minutes
9 that it is. First, let's talk about material benefit. We were
10 counsel to a Chapter 11 Debtor-in-Possession, who was a
11 Debtor-in-Possession for 18 months. We did a lot of things.
12 We secured the use of cash collateral. We insured the
13 noteholders couldn't foreclose during the first months of the
14 case, which they wanted to do. We went up to the Fifth Circuit
15 when they appealed our victory in front of Your Honor, and we
16 got the Fifth Circuit to affirm it.

17 We got exclusivity extended. We negotiated with the
18 noteholders, to no avail, but we did negotiate. We
19 accomplished a valuation of some very complicated assets. We
20 proposed a plan that got the plan process rolling. Nobody
21 liked it, but it sure as heck got the plan process going. And
22 eventually, it resulted in confirmation of a plan. It was a
23 successful Chapter 11 case.

24 We made sure that ScoPac kept getting paid for its
25 product, which was a significant question, as Your Honor

1 remembers, because PALCO a couple of times couldn't pay, and
2 after the confirmation, we didn't think they could pay any more
3 either.

4 Ultimately, we did everything we had to to turn over
5 a functioning business to the buyer. And if you look at
6 Spillman Development, same thing, the debtor was not able to
7 confirm its own plan and spent a lot of money fighting the
8 secured creditor's plan. Ultimately, neither plan was
9 confirmed, as the Court told them both it was a big fat waste
10 of time. And ultimately, the assets were simply sold, and the
11 secured creditor bid in at a 363(k) sale and got the assets.

12 But the Court said, "Look, you represented a debtor.
13 This is not an equity committee case, like Gadzooks. It's not
14 a case in which a Chapter 11 trustee had to be appointed, like
15 ProSnacks. You were a Debtor-in-Possession, and you
16 represented them, and you kept body and soul together for as
17 long as it took." Okay. So that's --

18 THE COURT: But you could read ProSnacks to say that
19 debtors' lawyers have to show actual financial benefit to the
20 estate.

21 MS. COLEMAN: You could, and I'm getting there,
22 because we got that, too. But the footnote that the Circuit
23 drops, they say you've got to have material benefit, but then
24 they drop this Footnote 17 that says, you know, the A&K lawyers
25 should have known that their effort was doomed. They should

1 have known they would never get a plan confirmed because they
2 had these involuntary petitioners out there who just wanted a
3 Chapter 7 and made it ultimately, made it imminently clear.

4 Now, Mr. Hokanson's going to argue that's exactly
5 what Mr. Neier was doing when he stood and jumped up and down
6 and said, "I will never, never, never, never, never agree."
7 I'm sure the Court remembers that. I remember it very well.
8 He said he'd never agree. And Mr. Hokanson is going to
9 analogize that and say, "Marathon would never agree. You could
10 never get your plan confirmed."

11 My point is ScoPac didn't have to have Marathon's
12 agreement. That was the beauty of it. The joint plan might
13 have had to have Marathon's agreement, and if Marathon never
14 changed their vote, the joint plan might have been doomed from
15 the get-go. But ScoPac's stand-alone plan wasn't doomed until
16 exit financing went away. So that takes us out of the you-
17 should-have-known-you-were-never-going-to-succeed analysis,
18 even if that's what the Fifth Circuit meant, which it isn't
19 ultimately clear it did.

20 So let's go to the dollars and cents test. Does the
21 benefit to the estate have to be quantified in a dollar and
22 cents amount? Now, Colliers says it doesn't. Colliers says,
23 you know, that there's other kinds of benefit, too. But if it
24 does, I think we meet that test.

25 And I would submit, Your Honor, the benefit to the

1 estate that derived from Gibson's services, the ScoPac estate,
2 which of course is most of the noteholders, is no less than
3 \$100 million, and I think it might be more. So let's break
4 down how much, how that works.

5 Well, okay, there -- let me get to that in a second.
6 There's also a concept that there's no compensation for work
7 that costs more to do than the benefit could possibly be even
8 if you win. If there is, Gibson meets that standard as well,
9 because at no time did we undertake work that we must have
10 known could never result in benefit to the estate greater than
11 the cost of doing the work in the first place.

12 So did we confirm our own plan, based on the value
13 opinions of ScoPac's experts? No, we didn't, because in part
14 because exit financing was withdrawn. The equity holder
15 agreed, in the settlement they made on May 1st, they
16 specifically agreed, "We will do everything we can to make the
17 MRC and Marathon plan get confirmed, including, you know,
18 kicking, including kicking out the officers and not supporting
19 ScoPac in any way," in any way. But that's not really the,
20 that's not really what the dollars and cents benefit is.

21 So the Court will recall, and Mr. Hail asked me a few
22 questions about this, first of all, we may not have confirmed
23 our own plan, but we did keep the noteholders from making off
24 with the timberlands after Mr. De Mauro said they were worth
25 \$290 million in September of 2007.

1 MRC came in, remember their first plan was trying to
2 pay the noteholders \$150 million in cash, and 325 million in
3 long-term notes. They couldn't do that either, largely because
4 of the valuation work that ScoPac had done. They ended up
5 having to pay the noteholders \$530 million, which was
6 100 million more than their valuation amount even was. Even
7 their valuation guy couldn't get as low as they wanted it to
8 be.

9 And we would submit, Your Honor, that increase was in
10 large part a result of Gibson's efforts in obtaining a
11 valuation of ScoPac and proposing the initial plans that it
12 proposed.

13 Similarly, when we worked on the stay pending appeal
14 issue, it cannot be said there was no chance that a stay would
15 have been obtained. And if it had, then the estate, there we
16 were in constant with the noteholders, because then it would
17 have stayed a consummation of the plan that they didn't think
18 and ScoPac didn't think, based on its own opinion, expert
19 opinions, was enough value. So that's kind of the, that's kind
20 of the basis for the hundred million dollars. But in fact, you
21 could argue it's simply more, something more like \$300 million.

22 So the bottom line is that even if you're inclined to
23 read ProSnacks in the most restrictive way it can be read,
24 Gibson's application passes the test because the noteholders
25 ended up, at the end of the day, with \$530 million, and that is

1 more than the initial amount that MRC wanted to pay them.

2 Now, MRC's going to argue, well, we changed our plan
3 even before, you know, before you put your evidence into court.
4 But the truth is that Mr. Yerges had been deposed and everybody
5 knew how strong his report was and how credible his report was.
6 Even though it wasn't ultimately accepted by the court, it was
7 enough to make everybody nervous, and we believe to increase
8 the amount paid to the noteholders. And I believe the
9 noteholders think so, too.

10 Excuse me, Your Honor. Let me just say a couple of
11 words about the LCC, the fee auditor report. We submit, Your
12 Honor, it's entitled to really no weight whatsoever. There's a
13 bunch of problems with it. First, for Ms. Patricelli's
14 declaration, we have no idea whether the LCC personnel who
15 prepared this thing are lawyers. We don't know whether they
16 have any expertise in bankruptcy cases.

17 What we do know is they don't have any knowledge of
18 this case beyond what they read in the fee applications. They
19 didn't look at the docket. They didn't look at the pleadings.
20 They didn't talk to anybody. Nobody ever called me. Nobody
21 ever said, "You know, hey, Mr. Hokanson, would you call
22 Ms. Coleman and find out, you know, what she meant by this, or
23 whether this is in compliance?" Nobody ever asked me any
24 questions about it, that I could have answered.

25 We do know what methodology they used, because that's

1 attached to Ms. Patricelli's declaration. As I said on the
2 stand, they transferred data from the fee applications into
3 LCC's database. There's no assurance it's transferred
4 correctly. Importantly, their database has no way of taking
5 into account the fact that we reduced our fees by over a
6 million dollars. Many of the items that they spit out of their
7 computer as questionable have already been the subject of
8 reductions. And LCC's computer has no way of knowing that.

9 Another problem is the objectionable categories are
10 overstated because some of the objections, some of the items
11 are objectionable in more ways than one, and so when they add
12 up, it's 2.4 million in questionable time entries, and you
13 know, and 500,000 in revising your work product, those could
14 very well be the same time entry objected to in two different
15 ways. That's the first thing, the report is just completely
16 unreliable.

17 And the second thing, the objections are just out of
18 context. They make no sense in this case. As I testified to,
19 yeah, we worked a lot of 12-hour days. We worked very, very
20 hard. I've been doing this for 24 years. I've never worked
21 this hard before, and I hope to never do it again. We had a
22 lot of responsibility in the case. We didn't have a lot of
23 lawyers working on it. We chose to staff it that way. And in
24 a sense, we sort of doomed ourselves to having to work
25 extremely hard during certain months.

1 And then Your Honor will remember the confirmation
2 trial. Gibson was in charge of direct and cross of I think
3 almost all the witnesses, as between Gibson and Baker Botts.
4 And Mr. Doran and Mr. Fromme did all of them. They're the
5 litigators. They did all of them. And we had fewer lawyers
6 than anybody else. So we've already taken, we've already taken
7 a very significant reduction, Your Honor.

8 And I would submit that especially given the
9 motivation of the objection, which is singling Gibson out for
10 the advice that it gave to its client --

11 THE COURT: Who did Baker Botts represent?

12 MS. COLEMAN: They represented PALCO, Your Honor.

13 THE COURT: Okay.

14 MS. COLEMAN: Along with Mr. Jordan.

15 THE COURT: Okay.

16 MS. COLEMAN: But the other thing I do want to point
17 out is that it seems like a lot of times when there's an
18 objection to fees, the objector always gets kind of something
19 for their trouble. They went to the trouble of objecting and
20 all of that. We would urge the Court not to do that here.

21 First of all, no creditor, no estate is going to
22 benefit from slashing Gibson's fees. MRC gets the entire
23 benefit of the reduction, because they're the ones who have to
24 pay it, pursuant to their plan. Given the obvious motivation
25 here of getting back at Gibson for what the ScoPac board

1 decided to do while Gibson was advising ScoPac, I don't think
2 that's appropriate.

3 Second, as I pointed out, Gibson's already taken a
4 very significant reduction. We did that voluntarily. We did
5 not meet with the U.S. Trustee and have him ask that. We did
6 that voluntarily, as an exercise of billing judgment throughout
7 the case. And the reductions added up.

8 The \$7,000 reduction in expenses was asked for by the
9 U.S. Trustee a few times during the case. He looked at our
10 bills every month, and he would -- including, by the way, the
11 400 hour, 400 hours billed by Mr. Fromme and Mr. Doran and me
12 in April.

13 THE COURT: Okay. Tell me about the contract labor.
14 Now, you charged, you did not, you contracted lawyers from
15 another firm?

16 MS. COLEMAN: No, no, no, Your Honor. Let me
17 explain. It's not particularly clear in our application. I
18 wish it were clearer. What we do is we have a, we have a
19 litigation support group, and they basically work on large
20 document productions throughout the firm. And the reason we
21 set it up is that it's way less expensive for our clients. The
22 average, the billing rate for all these contract attorneys,
23 regardless of their year level, I think, is \$255 an hour,
24 whereas our associates start out at, in the threes, and then
25 they go up to the fours like in their second year. So these

1 are --

2 THE COURT: So a person that gets out of law school
3 could go to work as an associate?

4 MS. COLEMAN: At Gibson, right.

5 THE COURT: Or they could go to work as a contract
6 laborer in your support unit?

7 MS. COLEMAN: Yeah, they could go to work for -- I
8 don't know the name of the agency, but they could go to work
9 for, you know, XYZ Document Review, Document Review R Us. I
10 don't know, let's call it that.

11 THE COURT: Okay. Now, that is a wholly owned
12 corporation that your firm owns?

13 MS. COLEMAN: It's not, Your Honor. It is an agency,
14 it is a temporary personnel agency. But these people come to
15 our offices and they work on our litigation support. They're a
16 technical employer, and the person who issues their paycheck is
17 Document Review R Us, which I just made up, but it's no
18 affiliate of Gibson.

19 THE COURT: So you go through a temp firm.

20 MS. COLEMAN: You go to a temp firm and --

21 THE COURT: And you say, "We need, we need five
22 document lawyers."

23 MS. COLEMAN: Yes, except that --

24 THE COURT: And they send over five document lawyers.

25 MS. COLEMAN: Sort of, except they send them over and

1 they stay for years. They work on this case, they work on,
2 then they move over to work on the next case, so --

3 THE COURT: Okay. But they're temp lawyers that
4 are --

5 MS. COLEMAN: Technically --

6 THE COURT: -- being hired from an agency --

7 MS. COLEMAN: Yes, technically they're --

8 THE COURT: -- to work at your office --

9 MS. COLEMAN: Correct.

10 THE COURT: -- that are not employees of --

11 MS. COLEMAN: Of Gibson.

12 THE COURT: -- your firm.

13 MS. COLEMAN: That's correct. But they're
14 temporary --

15 THE COURT: And you pay this temporary agency for
16 their money, or do you pay them individually?

17 MS. COLEMAN: We pay the temporary agency, which pays
18 them. But they're in our offices sometimes for five and ten
19 years. I mean, they're temporary, but they're there for,
20 they're members of our document --

21 THE COURT: All right. So, and when you --

22 MS. COLEMAN: So we train them --

23 THE COURT: When they do the work, you pay X dollars
24 for them.

25 MS. COLEMAN: Right.

1 THE COURT: But you have billed it at a higher level
2 than that.

3 MS. COLEMAN: That's right. It's just like an
4 associate.

5 THE COURT: And so how much money is the extra over
6 what you actually paid for them?

7 MS. COLEMAN: It's \$175,000 of overhead that we
8 attribute to them, plus -- it's 550 --

9 THE COURT: So there's \$175,000 --

10 MS. COLEMAN: In overhead.

11 THE COURT: -- in your application that represents
12 the difference between what you paid for those lawyers --

13 MS. COLEMAN: It's actually more, Your Honor.

14 THE COURT: -- and how much you actually billed.

15 MS. COLEMAN: It's actually more, Your Honor. The
16 aggregate amount that we billed for them is 554,000.

17 THE COURT: 554,000 --

18 MS. COLEMAN: Yes.

19 THE COURT: -- is the aggregate amount that you
20 billed for them.

21 MS. COLEMAN: Right. 108,000 and change is the
22 amount that we paid the agency for them.

23 THE COURT: You paid 108,000 for them.

24 MS. COLEMAN: Right. And 175,000 is the overhead
25 number that we attribute to them, because they're in our

1 offices, using our computers. We train them. They, you know,
2 get to eat breakfast in the coffee room. They're basically
3 treated like regular employees. It's just their paycheck comes
4 from somebody else. It's as if an associate was in our --

5 THE COURT: But they don't get a 401(k), they don't
6 get -- from you.

7 MS. COLEMAN: No, they don't. Correct.

8 THE COURT: They don't get paid vacation from you.

9 MS. COLEMAN: No, they don't.

10 THE COURT: They don't get, I mean, they get to use
11 the bathrooms and they get to use your paper and they do all of
12 that, but all of your employees get to do all of that.

13 MS. COLEMAN: Well, most of them, yeah, we let them
14 use the bathrooms, yeah. But yes, that's correct, Your Honor.

15 THE COURT: Okay. But I don't understand, 108 and
16 175 doesn't add up to 554.

17 MS. COLEMAN: No, it doesn't, because there's a
18 profit margin in there.

19 THE COURT: And you throw in a profit. But it only
20 cost you 108 for all these contract employees?

21 MS. COLEMAN: On this case, yeah, that's the amount
22 that we paid for their hours on this case, yes.

23 THE COURT: Now, is there any cases somewhere that
24 authorizes you to do that? I mean, do they do that in the
25 Southern District of New York? They allow you to hire contract

1 lawyers and actually pay yourself six times more than, or five
2 times more than you actually paid for them?

3 MS. COLEMAN: Your Honor, there's a case, there's a
4 case cited in our brief that authorizes the retention of them
5 and the attribution of some overhead to them. That case did
6 not address the issue of profit margin. But we submit, Your
7 Honor, that we saved the estate a lot of money, because if we
8 had used regular Gibson associates, their hourly rate would
9 have been twice what these guys would have.

10 THE COURT: Okay. That would be like arguing, I
11 stayed, I decided to stay at the, whatever the cheap motel is
12 down here, and so I saved -- there aren't any expensive hotels
13 in Corpus, but assuming there were -- and let's say it was \$500
14 a night at the Omni and it was a hundred dollars a night down
15 the street at the cheap one, whatever that thing is called.
16 And then saying, "Well, we saved them \$400, so we're going to
17 take our -- \$400 a night, so we're going to take our hundred
18 dollar bill and add onto it something for profit."

19 MS. COLEMAN: Well, I guess, but it's not exactly
20 like that, because this is more like, this is more like
21 associates, because the alternative there -- there the
22 alternative is you stay at the more expensive hotel, and then
23 the estate would, you know, be asked to pay for that. Here,
24 the alternative is to use regular Gibson associates, who cost
25 us probably more, but we don't break it out that way, because

1 they're regular employees. But it would have cost the estate
2 more, because if we had used twelve Gibson associates at an
3 average rate of, I think the average associate rate is 442 --

4 THE COURT: Okay. But these temps, you know, your
5 Gibson associates are the cream of the crop from every law
6 class in the country.

7 MS. COLEMAN: Well, that is true, Your Honor.

8 THE COURT: Whereas these temps are different
9 lawyers, aren't they? I mean, if they could have gotten to be
10 an associate at Gibson Dunn, they wouldn't be one of these
11 temps, would they?

12 MS. COLEMAN: I don't know about that, Your Honor,
13 but they probably would bitch a lot more about doing document
14 review. Excuse me. I shouldn't be -- I shouldn't be using
15 nasty words like that. But, Your Honor, they're document
16 review specialists. They do it efficiently. They do it
17 quickly. They do it at a lower billing rate than our
18 associates would have.

19 THE COURT: Okay. But that lawyer that you got to do
20 that document review presumably works for less than what you
21 paid the temp for them.

22 MS. COLEMAN: That's probably right. That's probably
23 right.

24 THE COURT: Because the temp agency has probably got
25 profit built into what you pay them.

1 MS. COLEMAN: I would assume so, yes, Your Honor.

2 THE COURT: So presumably, you could have hired that
3 lawyer, if you wanted to have those things, if you wanted to
4 have, call them something, you know, I mean, you would have
5 associates and partners --

6 MS. COLEMAN: We have something, we have staff
7 attorneys.

8 THE COURT: Staff attorneys that you could have hired
9 probably at less even than, and you could have billed them out
10 at a higher rate, I guess, so but --

11 MS. COLEMAN: I think that's right, Your Honor. I
12 mean, essentially, essentially it's --

13 THE COURT: I guess the question is, from a legal
14 standpoint, in a bankruptcy case, which is totally different
15 from a typical legal case, should you be allowed to pay for
16 more than -- to bill the estate more than the cost of contract
17 lawyers.

18 MS. COLEMAN: I think that's exactly right, Your
19 Honor.

20 THE COURT: I don't know the answer to that.

21 MS. COLEMAN: It's a legal question. But I would
22 submit, Your Honor, that if you don't allow, if you don't allow
23 this, then nobody will use these guys in bankruptcy cases, and
24 I think -- I would submit that the quality of the document
25 review will suffer, because that's what they do is document

1 review, and they do it more efficiently than regular Gibson
2 associates do. And that's why we have the litigation support
3 team in the first place.

4 And once the decision gets out, everybody will say,
5 "Well, we're not doing that," and they'll just recruit their
6 regular associates. I'm sure I could have found twelve Gibson
7 associates, but it would have cost the estate more money, and
8 I'm not sure the document review would have been done in as
9 efficient and quick a manner. So it's just a -- but you're
10 right, it's a legal question. In any bankruptcy case, can you
11 do it.

12 Now, I will tell you that in every other big
13 litigation case, our clients have insisted that we do this,
14 because it costs them half of what it costs to have Gibson
15 people.

16 THE COURT: Right. And so you would normally think
17 that in the letter where they hire you, they would say, "Number
18 one, we want you to have a lower fee than you normally do.
19 We'll take you if you take that. But we'd also want you to use
20 these document review people, and we want you to bill us at
21 either their actual rate, or their rate plus 50 percent," or
22 whatever.

23 MS. COLEMAN: Or something.

24 THE COURT: I mean, you know, you would have had some
25 sort of negotiated thing, which you didn't do. So now I have

1 to decide what's the limit. All right. And you want five to
2 one.

3 MS. COLEMAN: Yes, Your Honor. But remember, there's
4 overhead in there as well, because they are in our offices.
5 And --

6 THE COURT: Right.

7 MS. COLEMAN: I also want to say that we do not
8 charge the full -- the way we calculate overhead is per office,
9 because of course every rent, every office has different rent.
10 So let's just use an example, let's say our office overhead for
11 the office where they are is \$100,000.

12 THE COURT: Well, you aren't allowed to charge office
13 overhead --

14 MS. COLEMAN: No, I understand, Your Honor.

15 THE COURT: -- for secretaries or lawyers.

16 MS. COLEMAN: I understand, Your Honor. I'm just
17 making the point that we're trying to make them be the same,
18 we're trying to treat them the same. So we have an office
19 overhead number per lawyer. We attribute 60 percent of that
20 number to contract attorneys, because we don't give them
21 vacation and benefits and all that. So we only attribute 60
22 percent. So the \$175,000 overhead number represents a 60
23 percent number. We're not trying to charge all of our overhead
24 to that. And we're not passing along overhead in a way that is
25 not allowed by the guidelines. We're trying to come to what

1 the real cost to Gibson of these lawyers is. And the real cost
2 is \$108 paid to the, thousand dollars paid to the agency, plus
3 the actual real hard costs of the overhead, which is 175. And
4 then there is the profit margin, which is the delta between 108
5 plus 175 and 554, which is a --

6 THE COURT: 554 and --

7 MS. COLEMAN: Yeah, this is about --

8 THE COURT: -- 283.

9 MS. COLEMAN: Yes, exactly.

10 THE COURT: Okay.

11 MS. COLEMAN: Thank you, Your Honor.

12 THE COURT: Thank you.

13 MR. FROMME: Real quickly, Your Honor. You asked a
14 question about how many, what was the amount of fees and costs
15 incurred since May 1st. Let me just give you that number.
16 Gibson Dunn's fees and costs from May 1st to August 30th, in
17 total, were 1 million --

18 THE COURT: What is this now?

19 MR. FROMME: This is the number you asked for.

20 THE COURT: How much you did after --

21 MR. FROMME: After May 1st. So from May 1 to August
22 30th.

23 THE COURT: 1 million --

24 MR. FROMME: -- 800,203.86.

25 THE COURT: Okay.

1 MR. FROMME: That's total fees and costs.

2 THE COURT: Yeah. All right, you're up.

3 MR. HOKANSON: Thank you, Your Honor. My name is
4 Jeff Hokanson. I'm from the firm of Hostetler & Kowalik in
5 Indianapolis. Judge, I think by way of introduction, I want to
6 let you know that I'm in this case because I am Counsel to the
7 plan officer in the Gadzooks fee dispute --

8 THE COURT: All right.

9 MR. HOKANSON: -- now back before the Bankruptcy
10 Judge on remand. Okay. I'm going to respond just very
11 briefly. I'm sure I'll be the shortest talker today, except
12 for perhaps Mr. Young.

13 As an initial matter, this is not at all about
14 revenge. The question is raised why my client is objecting to
15 the fees of Gibson Dunn and Diamond McCarthy. The problem --

16 THE COURT: Well, it's because they agreed to pay
17 them. I mean, when you confirm a plan, you've got to either
18 pay all the administrative expenses or show that you can pay
19 them within a reasonable time and you provided for that in the
20 plan.

21 MR. HOKANSON: That's exactly right. And I think,
22 though, that the numbers here were so startling that they
23 deserved further attention, first in the form of hiring LCC,
24 and second of all, drawing this objection. I don't believe
25 that there's any revenge or any Shakespearean motive at all in

1 this matter on behalf of my client.

2 Briefly, about the LCC reports, they're all in the
3 white binder that you have. Those reports, Judge, are nothing
4 but tools. We did not submit them as expert reports. And in
5 fact, the objections of the Gibson Dunn firm to those LCC
6 reports and to LCC's very existence remarkably parallels the
7 discussions in the In Re: Worldwide Direct case decided in
8 Delaware in 2004, which is cited in Gibson Dunn's brief today.

9 We'll let you make of what you want with those
10 reports. We find them to be excellent tools to help an
11 analysis of the professional fee applications of Gibson Dunn
12 and any number of other assignments for which they might be
13 engaged. LCC has been engaged in a number of large bankruptcy
14 cases, oftentimes on behalf of fee oversight committees.

15 Those reports, although they're strongly discounted
16 by the Gibson Dunn folks, we note that, just from looking
17 through those and responding to them, that the Gibson Dunn
18 folks reduced their fees that they were requesting by somewhere
19 around \$70,000 or so.

20 So, you know, even if everything in the Worldwide
21 case directed at LCC and everything directed at them by Gibson
22 Dunn are true, there's certainly some value to having an
23 outsider look at fee applications and raise red flags. Many of
24 those red flags may be easily explainable. Some are less so.
25 And that was really the point of bringing that in, and that's

1 why again we didn't try to bring them in as an expert or do
2 anything else that would unduly slow this process.

3 Briefly, on the contract lawyer issue, you're right.
4 The question is whether they can add a mark-up on top of this
5 expense. I think that the example of differential in hotels
6 and charging the difference is a good one. I think a better
7 one might be charging \$5 for penny paper clips. I mean, at
8 what point are they going to make a profit off of what should
9 just be a vendor item to them.

10 I have no doubt, I used to be in a big firm, and I
11 know how these document review companies work, and they're very
12 efficient. But for them to add the cost of that, plus an
13 overhead that exceeds the labor cost, which we don't have any
14 evidence before you, Judge, so I won't question that number.
15 But then to ask for 100 percent mark up, which is really how
16 the numbers work out, you used five to one. If you add the
17 amount that they paid the agency, plus the overhead, that's
18 about halfway to 554. So really what they've done is put a 100
19 percent mark up on that for a 50 percent profit.

20 I think that's probably an impermissible pass through
21 of an overhead charge. Or actually it's impermissible profit
22 off of an overhead charge. As Ms. Coleman indicated, there are
23 no cases on point that we're aware of either.

24 The cases that are on this issue tend to talk about
25 whether paying contract lawyers is an impermissible sharing of

1 compensation.

2 THE COURT: Right.

3 MR. HOKANSON: But there really aren't any that go to
4 the issue of whether they can profit off of that.

5 The third item I'd like to talk about are the
6 inadequate descriptions of their time entries. LCC does a very
7 good job of identifying these. And again, they all may be very
8 well explainable away by the folks at Gibson Dunn, but they had
9 time entries with inadequate or block time entries and so forth
10 in excess of \$2.6 million. What that means is neither LCC nor
11 you nor me nor my client could review those time entries and
12 have a good sense of what's going on.

13 Now, they're not all "prepare for confirmation
14 hearing." You know, to some extent I understand that there
15 might be a couple days of that where they wake up thinking
16 about the file and they fall asleep twelve hours later thinking
17 about the file. And maybe their time sheet says, "Prepare for
18 hearing," and one big line down it. But they're not all like
19 that. And the LCC reports I think do a good job of outlining
20 the fact that there are an awful lot of those entries, and
21 they're worth an awful lot of money in this case.

22 Mr. Fromme provided the information with respect to
23 the fees spent after May 1. Again, \$1.8 million, requested
24 after the point in time where apparently most everyone believes
25 that their client didn't have a horse left in this race, seems

1 like an excessive amount.

2 A point that Ms. Coleman has continually raised is
3 this voluntary discount in excess of a million dollars. We
4 don't know what that is. And I have no doubt that they had
5 adjustments to their invoices at some point of a million
6 dollars. But I've only known these folks a short time, and I
7 don't know that they're the folks that would leave any money on
8 the table either. And the fact that they would estimate \$250
9 in meals to come and defend an objection that hadn't been filed
10 suggests to me that they don't typically leave money on the
11 table.

12 So while there may be a write-off somewhere of some
13 amount, and maybe it's a million, maybe it's five million, the
14 fact of the matter is that's not before you. And it really is
15 irrelevant, in my view. It simply is not an amount that they
16 are requesting that could then be determined in the total
17 scheme of this thing.

18 And finally, I'd like to talk about ProSnacks. Our
19 Exhibit Number 17, which you have, but I have a free-standing
20 version, if that would be easier --

21 THE COURT: I've got 17. If you want me to look at
22 another one, I'll be glad to look at it.

23 MR. HOKANSON: No --

24 THE COURT: Whatever you want me to do.

25 MR. HOKANSON: It's the same one, Judge.

1 MR. HOLZER: It's a little bigger, I think.

2 THE COURT: Okay.

3 MR. HOKANSON: A little bigger font.

4 MR. HOLZER: Kind of tiny print, to get it on to a
5 single page.

6 THE COURT: Okay. Either one pretty much --

7 MR. HOKANSON: Yeah.

8 THE COURT: -- requires glasses.

9 MR. HOKANSON: That's the, you can --

10 THE COURT: Okay. Go ahead.

11 MR. HOKANSON: Judge, I'm happy to argue any point of
12 ProSnacks, but I think that, I think that's probably not
13 necessary, unless you prefer it. But instead, what I'd like to
14 do is in addition to the LCC reports, give you another tool.
15 This is a spreadsheet that my client and I prepared. And it
16 identifies the category of fees for which we believe may be
17 subject to what I will call a ProSnacks attack.

18 There are a lot of fees requested by Gibson Dunn in a
19 lot of categories, some as few as \$500, Judge. I mean, you
20 know, there's a materiality standard here as well. But what we
21 have --

22 THE COURT: There is \$2.3 million of their fee
23 application in nonworking travel time?

24 MR. HOKANSON: Yes, sir.

25 MS. COLEMAN: Your Honor --

1 MR. HOKANSON: Yes, sir, and we're --

2 MS. COLEMAN: I don't believe that that reflects the
3 fact that 50 percent of that amount is not billed.

4 THE COURT: So the amount that's billed is 1.15?

5 MS. COLEMAN: That's according to this, Your Honor.
6 I have not verified that. And quite frankly, I would be
7 surprised. But I will go back and look --

8 THE COURT: I mean, I know that it's a long way from
9 New York and California to Corpus, but I would be shocked if
10 there were \$2.3 million worth of travel time.

11 MS. COLEMAN: I would -- Your Honor, I was very
12 surprised when I saw this exhibit about half an hour before the
13 hearing started, and I would ask the Court for permission to go
14 back and look at that, because I frankly think that that's --

15 THE COURT: I would like to know exactly how much of
16 the total amount of the time was travel.

17 MS. COLEMAN: We will go back and --

18 MR. HOKANSON: Okay.

19 MS. COLEMAN: -- undertake to provide that, Your
20 Honor.

21 MR. HOKANSON: And --

22 THE COURT: Go ahead.

23 MR. HOKANSON: Okay. Well, so what we've tried to do
24 here is often write two columns, provide an indication of why
25 we think some of these categories might be subject to a

1 ProSnacks analysis. And candidly, we have no, there's no
2 science in our method here. So for example, in the first
3 category with respect to asset analysis, we suggest that a
4 discount of up to 50 percent may be appropriate in their fees,
5 because again, there was an excessive amount of time dedicated
6 to issues like the Redwood Ranch and other things, which --

7 THE COURT: So you think there's \$1.3 million in
8 formulating the Redwood Ranch project?

9 MR. HOKANSON: No. That's all of their efforts. And
10 we're suggesting to the extent it was for Redwood Ranch and
11 other things that were equally unfeasible, we should have a
12 discount.

13 THE COURT: Okay. Well, one could argue that the
14 Redwood Ranch idea was, I mean, I'm not saying it was, but was
15 such terminal optimism that perhaps it was over the top.

16 MR. HOKANSON: That's right.

17 THE COURT: If that were the case, do you have a
18 figure for the amount of work that went into that portion of
19 it?

20 MR. HOKANSON: I do not, Judge.

21 THE COURT: So you just took all of the asset
22 analysis, and you figured that 50 percent of that ought to be
23 cut.

24 MR. HOKANSON: No. We're suggesting that based on
25 the information we have, we expect that perhaps up to half of

1 the time that Gibson Dunn spent on that category maybe, is
2 subject to a close review by the Court.

3 THE COURT: Okay.

4 MR. HOKANSON: I am not suggesting that they deserve,
5 or a 50 percent discount should be imposed on them. Here
6 again, this is a tool that I'm hoping the Court will use to
7 say, well -- and obviously you, and candidly the court
8 reporters, know an awful lot about this case than I do in terms
9 of its history. But what we're hoping to provide to you is a
10 tool here that will spark your recollection as to what these
11 folks did on these various categories --

12 THE COURT: Well, I mean, you know, of course now
13 we're in court here, so I can say anything I want, I guess, as
14 long as it's reasonable. But I mean, there is -- I mean, if
15 you analyze the evidence that I had on assets, which turned out
16 to be the driving issue in this case, the value of the
17 timberland.

18 MR. HOKANSON: Yes.

19 THE COURT: But for the Debtor's evidence, this
20 wouldn't have even been a close case, because there were no
21 decent experts on the part of anybody else opposing the plan
22 that ultimately got confirmed, other than the Debtors.

23 MR. HOKANSON: Uh-huh.

24 THE COURT: I mean, I think that's pretty obvious
25 from my opinion. But in terms of benefit to the trier of fact,

1 we had some, we had a lot of experts, but the ones that were
2 really, I mean, that I thought were important to look at, one
3 of them was the Debtor's expert. Now, whether that was their
4 work or their expert's work, I mean, that's certainly something
5 to consider, isn't it?

6 MR. HOKANSON: Absolutely. Absolutely, Judge. And I
7 think that if you're looking at that, it tells me that you
8 probably are looking at this from what I would call a proper
9 ProSnacks view, which is to what extent did their services
10 provide an actual benefit to the estate.

11 THE COURT: Okay. But that's not what ProSnacks
12 said. Now, we can argue about what it means --

13 MR. HOKANSON: Okay.

14 THE COURT: -- but what they did is they were trying
15 to decide whether or not you could get legal fees for a
16 debtor's lawyer after you appoint a trustee. And there was a
17 split of circuits about that.

18 MR. HOKANSON: Yes.

19 THE COURT: And some said, "Yes, you can, as long as
20 you provide actual benefit to the estate," similar to the test
21 you have in the Fifth Circuit, where if you're asking for fees
22 when you didn't get appointed to represent the debtor, you're
23 going back and trying to get fees without an appointment --

24 MR. HOKANSON: Right.

25 THE COURT: -- if you don't get appointed to

1 represent the debtor, you don't get fees unless you actually
2 benefitted the estate. And what we mean by that is you brought
3 money into the estate.

4 MR. HOKANSON: Right. That's understood.

5 THE COURT: Okay. And they looked at the issue of
6 whether or not a debtor's lawyer can get paid after the
7 appointment of a trustee, and ProSnacks found, contrary to
8 other places, you could not, even if you benefitted the
9 estate --

10 MR. HOKANSON: Right.

11 THE COURT: -- and brought in money. Okay. That's
12 what the Fifth Circuit ruled in ProSnacks. But then, in what
13 appears to be dicta perhaps, or -- they went ahead and said
14 that, oh, and by the way, for the period prior to appointing
15 the trustee, they cited the cases that talk about, about the
16 test for after the appointment of the trustee --

17 MR. HOKANSON: Yes.

18 THE COURT: -- in those other circuits --

19 MR. HOKANSON: Yes.

20 THE COURT: -- to find that there has to be benefit
21 to the estate. Now, I don't know whether that's what they
22 really meant, I mean, because they were citing cases that they
23 were choosing not to follow, or the test that had to do with
24 the appointment of trustee, or the test prior to the
25 appointment of the trustee.

1 MR. HOKANSON: Right.

2 THE COURT: That's not what we all thought that the
3 test was. And if it is the test, no debtor's lawyers would
4 ever practice. I mean, we wouldn't have -- I mean, what could
5 you do? You don't get a plan confirmed, or whatever, you don't
6 get paid? I mean, I don't know how anyone could ever be a
7 debtor's lawyer if that's the rule.

8 Now, and that's why Judge Monroe, I think, says,
9 "Well, I don't know what it means. It certainly can't mean
10 that." Maybe they just mean we still have to show benefit to
11 the estate. And that benefit might be they provided
12 administrative help, they, you know, the plan, whatever --

13 MR. HOKANSON: Sure.

14 THE COURT: You know, that might have liquidated
15 ultimately, and the plan might be liquidating. What benefit is
16 that then?

17 MR. HOKANSON: Right. Right.

18 THE COURT: There may just --

19 MR. HOKANSON: Well, you identify the point exactly.

20 THE COURT: Okay.

21 MR. HOKANSON: And you're right, there's a fair
22 amount of mud on everybody's boots who walks that field.

23 THE COURT: Okay.

24 MR. HOKANSON: Okay? And I expect at some point it's
25 going to be cleared up. But I think that until then, I think

1 the hindsight standard is what is enforceable in the Fifth
2 Circuit. I think that the proper standard for you to apply --

3 THE COURT: And that's why you're practicing in
4 Indiana.

5 MR. HOKANSON: Well, there may be something to that,
6 Judge.

7 THE COURT: Okay.

8 MR. HOKANSON: There may be something to that. But
9 again, all right, so the Exhibit 17 here, that's the point of
10 that, Judge. We're only asking you to use this to tickle your
11 memory as to the portions of the work provided by Gibson Dunn,
12 which we believe deserve a very close look under what we
13 believe to be the appropriate ProSnack standard.

14 THE COURT: Okay. What did Diamond McCarthy do in
15 this case? Who did they represent?

16 MR. JOHNSON: Your Honor, we were co-counsel to
17 ScoPac --

18 THE COURT: You were co-counsel, okay. I gotcha.

19 MR. JOHNSON: With Gibson Dunn.

20 MR. HOKANSON: That's all I have, Your Honor.

21 THE COURT: Thank you.

22 MR. FROMME: Your Honor --

23 THE COURT: Were you going to say something?

24 MR. HAIL: No, Your Honor, I was not.

25 THE COURT: That's it? Okay. Were you going to say

1 anything? No. Okay.

2 MR. FROMME: Just because I'm the numbers guy.

3 THE COURT: All right.

4 MR. FROMME: On the nonworking travel, what I did was
5 I went onto LCC's website and downloaded the report, nonworking
6 travel time, and I have that report here. And the total amount
7 for all of the entire case is \$393,066. That's the total
8 amount of nonworking travel time as LCC --

9 THE COURT: That you billed.

10 MR. FROMME: Well, we billed, then we reduced by 50
11 percent.

12 THE COURT: So your total travel time, if you billed
13 at your rate, would have been almost 400,000. But you billed
14 it at almost 200,000.

15 MR. FROMME: That's correct.

16 THE COURT: And there's some travel time that you
17 didn't bill at all. If you were working while you were
18 traveling, you didn't call that travel time?

19 MR. FROMME: That's right. We billed to the matter,
20 if we were working. And there was some travel time frankly
21 that we just didn't bill. We didn't bill it as nonworking, we
22 didn't --

23 THE COURT: But in your application, nonworking
24 travel time, the total amount is 393,000, billed at half that.

25 MR. FROMME: As reported by LCC, as they went through

1 all the invoices and retyped them in their computer.

2 MR. HAIL: Your Honor, this is Brian Hail. The only
3 thing I -- I don't know the answer, other than I'm looking at
4 the fourth interim fee app., and it's got a -- this is Gibson
5 Exhibit 2, and for that period, they have a travel time
6 category, which is Category M, with a certain number of hours
7 and a certain number of fees. And it, for that period, that
8 was the six-month period between February and July, the fees
9 charged were \$95,000. So, and that reflects --

10 THE COURT: So it could have been 400,000 for the
11 total.

12 MR. HAIL: Say that again?

13 THE COURT: Could have been 400,000.

14 MR. HAIL: I agree, Your Honor, but --

15 THE COURT: Because we really did the big travel
16 towards the end.

17 MR. HAIL: I agree with that, Your Honor. But what I
18 was -- the point I was going to make was simply that that's,
19 the fee app. says that that has already been reduced 50
20 percent, that that \$95,000 --

21 THE COURT: The 95 is half of what --

22 MR. HAIL: Half of what would have been charged
23 otherwise. So I'm not as familiar with the LCC reports as Eric
24 and as Jeff. I'm only suggesting, I gather --

25 THE COURT: So if that's the case --

1 MR. HAIL: -- it's 393.

2 THE COURT: -- that means in that fourth final fee
3 app., you did half of your travel. Is that --

4 MR. FROMME: Yeah. We always, it --

5 THE COURT: Because there's \$200,000 worth of travel
6 in the fourth fee application, according to him. You're saying
7 there's 400 for the whole thing.

8 MR. FROMME: Their report says 393 for the entire
9 case.

10 MR. HAIL: We can look at the fee apps, the first,
11 second and third fee apps and figure out what's in that
12 particular category and how they billed it.

13 THE COURT: Well --

14 MR. HAIL: Because I mean, I'm only suggesting --

15 THE COURT: I mean, has anybody done that? I mean,
16 there are four fee applications. So it's only four --

17 MR. FROMME: I can sit down and go through that with
18 Mr. Hail right now and get that number for you, Your Honor.

19 THE COURT: Okay.

20 MR. HAIL: I'm only saying it seems that's the way it
21 was done.

22 THE COURT: Okay. Well, I would like to have those,
23 those figures just to --

24 MR. FROMME: Well, I'll do that for you right now,
25 Your Honor.

1 THE COURT: It's important for me to know exactly
2 what we're doing. And then I guess I will spend some time
3 reviewing all of this and try to make a decision quickly.

4 Was there ever a projection at any point along? I
5 mean, was their testimony in the confirmation hearing about the
6 projected fees?

7 MS. COLEMAN: Your Honor -- yeah, there was, Your
8 Honor. In the 507(b) context, we had a lot of testimony about
9 the administrative fees for both of the estates. And whatever,
10 you know, whatever everybody was --

11 THE COURT: And at one time, there was an adjustment.
12 I'm not sure whether the adjustment included in it the
13 administrative fees for the amount that was actually going to
14 go to the bondholders out of the cash.

15 MS. COLEMAN: That's exactly right, Your Honor.

16 THE COURT: And, but I insisted that there be a flat
17 amount for which it could not go below.

18 MS. COLEMAN: It couldn't go below. Right, Your
19 Honor.

20 THE COURT: So, so as a practical matter, where are
21 we on that? Are there sufficient auction rate securities and
22 all sorts of other things that have now become useless that, I
23 don't know, Lehman Brothers securities or whatever, any kind of
24 securities in there that, and whatever else, to where the, we
25 ate up that whole adjustment?

1 MR. HAIL: Your Honor, MRC complied with the terms
2 of -- MRC, HRC and the reorganized entities complied with the
3 terms of the plan. And they paid the amounts required under
4 the various things and --

5 THE COURT: Right. I understand that.

6 MR. HAIL: I think they took the auction rate
7 securities.

8 MR. HOLZER: MRC took the hickey on the auction rate
9 securities. As far as I know, they're still holding --

10 MR. HAIL: I think they hold them and --

11 THE COURT: They're still holding them, so they don't
12 know what they're going to be worth.

13 MR. HAIL: I believe that they --

14 THE COURT: They're hoping that everything works out
15 and auction rate securities become cash equivalent again.

16 MR. HAIL: They want to maximize the value of them
17 for sure.

18 MR. HOLZER: And as to your question of whether there
19 was an estimate of the fees, I don't know the specifics, but I
20 do know that my clients were surprised at how much more they
21 had to pay in administrative claims, even setting aside Gibson
22 Dunn, on everything else, how much more they had to pay than
23 they were expecting.

24 THE COURT: Okay. Well, I mean, I'm not sure that
25 that's -- I mean, I'm not sure whose fault that is. I mean,

1 people can be realistic about projections, and we try to be
2 realistic about projections, but --

3 MR. HOLZER: I think that's not unusual --

4 THE COURT: Anything else?

5 MR. HOLZER: I think it's not unusual to guess too
6 low.

7 THE COURT: No. Anything else?

8 MS. COLEMAN: Your Honor, we would like to sit down
9 with Mr. Hail and figure out this travel number tonight. Would
10 Your Honor like us to just --

11 MR. HAIL: We ought to be able to get them in 10
12 seconds.

13 THE COURT: If you can get them, I mean, you can
14 just --

15 MR. HAIL: I don't even know --

16 THE COURT: If you just figure them out and send it
17 to me in an e-mail or a fax or, you know, a handwritten --

18 MS. COLEMAN: Okay.

19 THE COURT: -- thing that you pass in, I don't care.
20 I mean, I'm going home. I know you all would like to. So
21 whether you do it now or whether you do it on the way home, I
22 don't really, I mean, I don't know.

23 (Proceedings concluded at 5:30 p.m.)

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1 I, court approved transcriber, certify that the foregoing is a
2 correct transcript from the official electronic sound recording
of the proceedings in the above-entitled matter.

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/s/ Molly Carter
Molly Carter

November 25, 2008
Date

